

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.407 of 2023**

Arising Out of PS. Case No.-636 Year-2018 Thana- AHYAPUR District- Muzaffarpur

Birju Ram @ Birju Baba Son of Khedu Ram R/o Village/Mohalla- Chaturi  
Punas, P.S.- Ahiyapur, District- Muzaffarpur ... .. Appellant  
Versus

1. The State of Bihar
2. [REDACTED] R/o Village- Raja Punas, P.S.- Ahiyapur,  
District- Muzaffarpur  
... .. Respondents

**Appearance :**

For the Appellant/s : Mr. Prashant Kumar, Amicus Curiae  
For the State : Mr. Abhimanyu Sharma, APP  
For the Informant : None

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD  
and  
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA  
ORAL JUDGMENT  
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 10-03-2026**

We have heard learned counsel for the appellant and learned Additional Public Prosecutor for the State.

2. Despite proper service of notice on the legal heir/husband of the informant, no one has entered appearance to oppose the appeal.

3. This appeal has been preferred for setting aside the judgment of conviction dated 22.04.2022 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 28.04.2022 (hereinafter referred to as the 'impugned order') passed by learned Additional District & Sessions Judge-VI-cum Special Judge, POCSO Act, Muzaffarpur (hereinafter referred to as the



‘learned trial court’) in POCSO (G.R. No.) 84 of 2018 arising out of Ahiyapur P.S. Case No. 636 of 2018. By the impugned judgment, the appellant has been convicted for the offences punishable under Section 376(2) of the Indian Penal Code (in short ‘IPC’) and Section 6 of the Protection of Children from Sexual Offences Act (in short ‘POCSO Act’) and has been sentenced to undergo twenty years rigorous imprisonment with a fine of Rs.50,000/- under Section 6 of the POCSO Act and in default of payment of fine, he has to further undergo two years simple imprisonment.

#### **Prosecution Case**

4. The prosecution case is based on the *fardbeyan* of the informant (PW-5) who is mother of the victim. In her *fardbeyan*, the informant has alleged that because of stomachache on 10.06.2018 at about 10:00 PM, she took her minor daughter aged about 11 years to her co-villager Birju Ram @ Birju Baba (the appellant) for ‘*totama*’. The Baba (appellant) gave five flowers and asked the informant to sit there as he is going to do *jhadphuk* upon which the informant said that she will accompany him with her daughter on which the accused did *jhadphuk* in front of her and asked her to come again on 12.06.2018 (Tuesday). It is alleged that on 12.06.2018, the informant did not visit the appellant but the appellant himself came at the darwaza of the informant at 9.00 PM and said that he has come to do ‘*totama*’ and let her minor daughter



go with him, the informant became ready to let her daughter go with the appellant. After one hour, minor victim girl returned back weeping and said that Birju Baba took her in the litchi orchard of Bholi Sharma where he removed her leggings and frock, laid her down on his *gamchha* on the ground, committed wrong act with her, gave her fifty rupees and asked to purchase snacks and also asked not to tell this to anybody. It is further alleged that the informant told about this occurrence to her husband then her husband took his daughter to medical for treatment. The informant believes that in the name of *jhadphuk*, the appellant committed rape on her minor daughter.

5. On the basis of this *fardebayan*, FIR being Ahiyapur P.S. Case No. 636 of 2018 dated 13.06.2018 was registered under Section 376 IPC, 3/4 of the Prevention of Witch (Daain) Practices Act and 8/10 of the POCSO Act against Birju Ram @ Birju Baba. After investigation, police submitted chargesheet bearing Chargesheet No. 649 of 2018 dated 31.08.2018 under Section 376 IPC, 3/4 of the Prevention of Witch (Daain) Practices Act and Section 4 of the POCSO Act against Birju Ram @ Birju Baba. Learned trial court vide order dated 12.09.2018 took cognizance of the offences punishable under above-mentioned Sections against the appellant.



6. Charges were read over and explained to the appellant in Hindi to which he denied and claimed to be tried, accordingly, vide order dated 03.10.2018 charges were framed under Section 376 IPC and Section 6 of the POCSO Act against the appellant Birju Ram @ Birju Baba.

7. In course of trial, the prosecution has examined altogether seven witnesses and exhibited several documentary evidences. The description of the prosecution witnesses and the exhibits are given hereunder in tabular form:-

**List of Prosecution Witnesses**

PW-1	Victim
PW-2	Shivchandra Sahni
PW-3	Grandmother of victim
PW-4	Niece of victim
PW-5	Mother of the victim
PW-6	Anita Devi (I.O.)
PW-7	Dr. Pooja Sinha

**List of Exhibits on behalf of Prosecution**

Exhibit '1'	Signature of victim on Section 164 CrPC statement
Exhibit '1/1'	Signature of Shivchandra Sahni on fardbeyan
Exhibit '2'	Endorsement on fardbeyan to register case
Exhibit '3'	Formal FIR
Exhibit '4'	Medical Examination Report of victim

8. Thereafter, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure (in short 'CrPC') in which he took a plea that he is innocent.



9. The defence has not adduced any oral or any documentary evidence.

**Findings of the Learned Trial Court**

10. Learned trial court after analysing the evidences available on the record found that the victim, who is minor, in her statement under Section 164 CrPC has very clearly stated that the appellant committed penetrative sexual assault against her and there is no reason on the record either to overlook this evidence or to discard the same.

11. Learned trial court found that that there is no contradiction between the statement 164 CrPC and the FIR version as also in the deposition of victim girl (PW-1) and the evidence of other corroborative witnesses.

12. Learned trial court found that the evidence of other witnesses being victim's parents, doctor and the I.O. there is no deviation on their evidence on the point of date of occurrence and as such evidence of other witnesses, corroborates evidence of the victim girl on the point of commission of penetrative sexual assault.

13. Learned trial court, after considering all the facts and circumstances of the case found that the prosecution has successfully been able to prove the charges levelled against the appellant beyond all reasonable doubts. Accordingly, learned trial



court held the appellant guilty of the offences punishable under Section 6 of the POCSO Act and Section 376(2) IPC.

**Submissions on behalf of the Appellant**

14. Learned Amicus Curiae appointed by the Court submits that there is delay of twenty hours in the lodgement of FIR and there is no explanation offered by the prosecution for delay in recording of *fardbeyan* of the mother on the next date of the occurrence. It is further submitted that there is unjustified delay in recording the statement of the victim under section 164 of CrPC, it has been recorded after a gap of eleven days, therefore, the veracity of statement recorded under section 164 CrPC is hit by non-compliance of section 164 (5A) CrPC which provides for recording of such statement as soon as the commission of offence is brought to the notice of the police. Learned Amicus has relied on the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka vs. Shivanna** reported in **(2014) 8 SCC 913** in which the Hon'ble Supreme Court has specifically directed for timely recording of statements of victims of rape. Thus it is submitted that reliance by the learned trial court upon the statement of the victim recorded under Section 164 CrPC is misplaced as such statements cannot be treated as a piece of evidence.

15. Learned Amicus further submits that the age of the victim has not been proved by the prosecution in the manner as



mandated under the Juvenile Justice (Care and Protection of Children) Act, 2015. Therefore, the rigours of the POCSO Act can be attracted only when the victim is conclusively proved to be a child and the age of the victim is one of the foundational facts for initiating and sustaining a prosecution under the POCSO Act.

**16.** It is further submitted that the clothes of the alleged victim have neither been seized nor exhibited by the prosecution. Consequently, there is no evidence to support the prosecution's case that any blood was found, noticed or seized on the clothes or at the place of occurrence. It is submitted that the appellant was not medically examined as mandated under Section 53A CrPC despite his arrest on the same day. Such examination could have aided the defence in contradicting the prosecution story, particularly given that the appellant was 68 years old at the time of the alleged occurrence.

**17.** Learned Amicus further submits that the medical findings do not support the prosecution evidence. While prosecution witnesses have claimed that blood was found on the person/clothes of the alleged victim, there is no material to corroborate this assertion and the Medical Report (Exhibit '4') fails to indicate any injury (internal or external) on the private parts of the alleged victim.



**18.** It is further pointed out that PW-2 in paragraph '8', PW-4 in paragraph '14' and PW-5 in paragraph '10' have unequivocally stated that the alleged victim became unconscious after returning home and was taken to hospital for treatment. However, the prosecution has failed to exhibit any treatment papers or documents in this regard, leaving this fact unproven beyond reasonable doubt due to the absence of medical evidence. It is settled law that facts forming the effect of facts in issue and subsequent conduct of a person are relevant under Sections 6, 7, and 8 of the Indian Evidence Act. Therefore, truthfulness of the ocular version is negated in totality as wholly inconsistent with the medical report and therefore, oral version cannot be relied upon with certainty.

**19.** It is further submitted that the earliest version of the occurrence has been suppressed. PW-1 in paragraph '9', PW-4 in paragraph '15' and PW-5 in paragraph '11' of their deposition have unequivocally asserted that the victim's *fardbeyan* was reduced to writing by the police on 12.06.2018 (date of occurrence) and signed by her, however, the exhibited FIR (Exhibit '3') annexes the mother's *fardbeyan* dated 13.06.2018 at 15:00 Hrs., clearly indicating suppression of the earliest version. Such suppression strikes at the root of the prosecution case and creates serious doubt about fabrication of the story after deliberation. In this regard,



reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of **Allarakha Habib Memon vs. State of Gujarat** reported in **(2024) 9 SCC 546**.

**20.** It is further submitted that the I.O. reached the place of occurrence only after three days from the date of the alleged incident and the place of occurrence as stated by the I.O. is contradictory to that stated by other witnesses in this context.

**21.** Learned Amicus Curiae for the appellant submits that the learned Magistrate failed to examine the victim's competency under Section 118 of the Evidence Act before recording her statement under Section 164 CrPC, despite her being a child witness whose ability and competency ought to have been assessed by the court. Moreover, the learned trial court has not followed the mandated provisions and guiding principles laid down in this regard.

**22.** Lastly, it is submitted that the sentencing is based on a misconceived legal position prevailing on the date of occurrence (12.06.2018). The amendment to Section 6 of the POCSO Act, enhancing minimum punishment to rigorous imprisonment for 20 years took effect only on 16.08.2019, whereas prior thereto, it prescribed minimum rigorous imprisonment for 10 years yet, the learned Special Court erroneously applied Section 42 of the POCSO Act to deem Section 6 of the POCSO Act as attracting



higher punishment (minimum rigorous imprisonment 20 years) than Section 376(2) IPC (minimum 10 years rigorous imprisonment).

23. Learned Amicus for the appellant has also relied upon several judgment of the Hon'ble Supreme Court in the case of **Babu Sahebagouda Rudragoudar vs. State of Karnataka** reported in (2024) 8 SCC 149, **Krishan Kumar Malik vs. State of Haryana** reported in (2011) 7 SCC 130, **Krishnegowda vs. State of Karnataka** reported in (2017) 13 SCC 98, **Sunil Kumar Sambhudayal Gupta vs. State of Maharashtra** reported in (2010) 13 SCC 657.

#### **Submissions on behalf of the State**

24. Learned Additional Public Prosecutor for the State has defended the impugned judgment and order of the learned trial court. It is submitted that mother of the victim (PW-5) has supported the case of prosecution and the informant's deposition is getting corroborated by the evidence of PW-2, PW-3 and PW-4 and from perusal of their depositions it appears that the same are quite consistent and do not suffer from any contradiction.

#### **Consideration**

25. We have heard learned Amicus Curiae for the appellant and learned Additional Public Prosecutor for the State. The prosecution case arises out of the *fardbeyan* of the mother of the victim girl recorded at Gaynic Ward, SKMCH, Muzaffarpur at



15:00 Hrs. In her *fardebayan*, the informant has alleged that because of stomachache on 10.06.2018 at about 10:00 PM, she took her minor daughter aged about 11 years to her co-villager Birju Ram @ Birju Baba (the appellant) for 'totama'. The Baba (appellant) gave five flowers and asked the informant to sit there as he is going to do *jhadphuk* upon which the informant said that she will accompany him with her daughter on which the accused did *jhadphuk* in front of her and asked her to come again on 12.06.2018 (Tuesday). It is alleged that on 12.06.2018, the informant did not visit the appellant but the appellant himself came at the darwaza of the informant at 9.00 PM and said that he has come to do 'totama' and let her minor daughter go with him, the informant became ready to let her daughter go with the appellant. After one hour, minor victim girl returned back weeping and said that Birju Baba took her in the litchi orchard of Bholi Sharma where he removed her leggings and frock, laid her down on his *gamchha* on the ground, committed wrong act with her, gave her fifty rupees and asked to purchase snacks and also asked not to tell this to anybody. It is further alleged that the informant told about this occurrence to her husband then her husband took his daughter to medical for treatment. The informant believes that in the name of *jhadphuk*, the appellant committed rape on her minor daughter.



**26.** To prove the charges, the prosecution has examined as many as seven witnesses and got exhibited five documents which we have already taken note of in detail hereinabove.

**27.** It appears that the victim in this case is a minor aged about 11 years at the time of occurrence. The date of occurrence as disclosed in the *fardbeyan* of the mother of the victim is 12.06.2018 at about 9:00 PM when the appellant came to the house of the victim and took her away with him on the pretext of doing some '*totma*'. As per prosecution, she was taken to a nearby orchard where according to the victim she was subjected to wrong act with her after making her to lie down on a piece of cloth (*gamchha*) placed over the earth. The victim girl (X) returned her home after one hour. The prosecution witnesses have stated that she was having blood on her clothes and blood was also there on the towel/*gamcha* but neither the said towel nor the cloth of the victim had been seized by the I.O.

This Court finds it quite unnatural conduct on the part of the parents to allow the victim girl to go with the appellant at 9:00 PM to an undisclosed place. The story does not inspire confidence.

**28.** The prosecution witness (PW-3) has stated in paragraph '9' that blood had come out due to commission of rape and blood were also present on the towel and the cloth of the victim but the clothes were not torn and there was no presence of



soil on the clothes. This witness (PW-3), who is the grandmother of the victim, has stated that there was no injury on the face and nose. It has come in evidence that the appellant was arrested on the date of registration of the FIR i.e. 13.06.2018 but no medical examination of the accused-appellant has been done. Thus, there is a clear non-compliance with the mandate of Section 53A of the CrPC.

**29.** This Court finds from the evidence of the prosecution witness (PW-4), who claims to be a close relative of the victim, that the victim had returned after half an hour but during this period, to which side she was taken away by the Baba (the appellant) was not seen, there were darkness and the victim had returned weeping. She has stated that after return, the victim had become unconscious thereafter she had regained consciousness and then she was taken to hospital where first of all she was treated and then case was lodged. Mother of the victim had lodged the case but this witness has stated that at first the victim had stated to Darogaji which Darogaji had written down and the victim had put her signature thereon. Thereafter, mother of the victim was interrogated and the other witnesses were also interrogated. Thus, it appears from the statement of PW-4 that the first statement was given by the victim herself and she had put her



signature on the statement recorded by Darogaji but this statement of the victim has not been brought on the record. This is where learned Amicus Curiae for the appellant has submitted that the prosecution has suppressed the first version of the case and only at a belated stage, the present case has been lodged on 13.06.2018 on the basis of the *fardebayan* of the mother of the victim. In this connection, attention of this Court has been drawn towards the fact that in the formal FIR (Exhibit '3'), the date and time of receipt of information of the occurrence in the police station is recorded as 13.06.2018 at 15:30 Hrs. whereas, the police station is only at a distance of 6 kilometers. We find much force in the submission that the first version of the prosecution case has been suppressed.

**30.** The victim does not claim that she had become unconscious after returning to her house rather she has stated that after returning to her house, she had disclosed everything to her father who took her for medical. She has also stated that she was not well for 5-6 days. The victim has claimed that the case was registered on the same day and she has further claimed that she had swelling on her head, however, this Court finds from the injury report (Exhibit '4') that the victim was examined by the doctor on 12.06.2018 at 11:30 PM in the Emergency Ward and during her physical examination, the doctor had not found any external injury



marked. The pelvic examination shows labia normal, hymen partially torn (old tear). The doctor did not find any spermatozoa and it would appear from the evidence of the doctor (PW-7) that the victim had told to the doctor that the accused who was known to her took her to a lonely place, he had removed her clothes and tried to penetrate but she somehow escaped by physical effort and informed her parents about the incident. It, therefore, appears from the medical examination report and the evidence of the doctor (PW-7) that the victim was able to escape a penetrating sexual act.

**31.** We have noticed from the evidence on the record that the victim girl was produced before the learned Magistrate for recording of her statement under Section 164 CrPC after eleven days. She disclosed her age as 11 years but perusal of her statement would show that the learned Magistrate has not examined the competence of the victim, who was a child witness, to speak the truth, no such competence test has been done and no satisfaction is recorded by the Magistrate. The Magistrate has not come in the dock to prove the 164 CrPC statement, therefore, the victim (PW-1) has only proved her statement and signature on the 164 CrPC statement which has been marked (Exhibit '1').

**32.** Again, in course of trial, the victim came to depose and disclosed her age as 11 years. This time also, the learned trial



court has not put any question to her to test her competence to speak the truth. Learned Amicus Curiae for the appellant has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **P. Ramesh vs. State represented by Inspector of Police** reported in **(2019) 20 SCC 593**. We reproduce paragraphs '13' to '16' hereunder for a ready reference:-

“**13.** Section 118<sup>3</sup> of the Evidence Act, 1872 deals with the competence of a person to testify before the court. Section 4<sup>4</sup> of the Oaths Act, 1969 requires all witnesses to take oath or affirmation, with an exception for child witnesses under the age of twelve years. Therefore, if the court is satisfied that the child witness below the age of twelve years is a competent witness, such a witness can be examined without oath or affirmation. The rule was stated in *Dattu Ramrao Sakhare v. State of Maharashtra*<sup>5</sup>, where this Court, in relation to child witnesses, held thus : (SCC p. 343, para 5)”

**3. “118. Who may testify.**—All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

*Explanation.*—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.”

**4. “4. Oaths or affirmations to be made by witnesses, interpreter and jurors.**—(1) Oaths or affirmations shall be made by the following persons, namely:

(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any court or person having by law or consent of parties authority to examine such persons or to receive evidence;

(b) interpreters of questions put to, and evidence given by, witnesses; and

(c) jurors:

Provided that where the witness is a child under twelve years of age, and the court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of Section 5 shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.

(2) Nothing in this section shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, unless he is examined as a witness for the defence, or necessary to administer to the official interpreter of any court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.”

**5.** (1997) 5 SCC 341 : 1997 SCC (Cri) 685]



“5. ... A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored.”

**14.** A child has to be a competent witness first, only then is her/his statement admissible. The rule was laid down in a decision of the US Supreme Court in *Wheeler v. United States*<sup>6</sup>, wherein it was held thus : (SCC OnLine US SC para 5)

“5. ... While no one would think of calling as a witness an infant only two or three years old, there is no precise age which determines the question of competency. *This depends on the capacity and intelligence of the child, his appreciation of the difference between truth and falsehood, as well as of his duty to tell the former. The decision of this question rests primarily with the trial Judge, who sees the proposed witness, notices his manner, his apparent possession or lack of intelligence, and may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligations of an oath.* As many of these matters cannot be photographed into the record the decision of the trial Judge will not be disturbed on review unless from that which is preserved it is clear that it was erroneous.”

(Emphasis supplied)



**15.** In *Ratansinh Dalsukhbhai Nayak v. State of Gujarat*<sup>7</sup>, this Court held thus : (SCC pp. 67-68, para 7)

“7. ... *The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous.* This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.”

(Emphasis supplied)

**16.** In order to determine the competency of a child witness, the Judge has to form her or his opinion. The Judge is at liberty to test the capacity of a child witness and no precise rule can be laid down regarding the degree of intelligence and knowledge which will render the child a competent witness. The competency of a child witness can be ascertained by questioning her/him to find out the capability to understand the occurrence witnessed and to speak the truth before the court. In criminal proceedings, a person of any age is competent to give evidence if she/he is able to (i) understand questions put as a witness; and (ii) give such answers to the questions that can be understood. A child of tender age can be allowed to testify if she/he has the intellectual capacity to understand questions and give rational answers thereto.<sup>8</sup> A child becomes incompetent only in case the court considers that the child was unable to understand the questions and answer them in a coherent and comprehensible manner<sup>9</sup>. If the child understands the questions put to her/him and gives rational answers to those questions, it can be taken that she/he is a competent witness to be examined.”

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7. (2004) 1 SCC 64 : 2004 SCC (Cri) 7. Subsequently, relied upon in *Nivrutti Pandurang Kokate v. State of Maharashtra*, (2008) 12 SCC 565 : (2009) 1 SCC (Cri) 454

8. *Ratansinh Dalsukhbhai Nayak v. State of Gujarat*, (2004) 1 SCC 64 : 2004 SCC (Cri) 7

9. Sarkar, *Law of Evidence*, 19th Edn., Vol. 2, Lexis Nexis, p. 2678 citing *Director of Public Prosecutions v. M*, 1998 QB 913 : (1998) 2 WLR 604 : (1997) 2 All ER 749 (QBD)



**33.** This Court is of the opinion that in this case conviction of the appellant on the basis of the sole testimony of the child witness would not be safe. We have pointed out the various reasons hereinabove.

**34.** We have also noticed that in his 313 CrPC statement, the appellant has stated that he has been falsely implicated in this case, he was selling vegetables and because of certain outstanding amount which he was claiming from the victim's family, he has been falsely implicated.

**35.** On perusal of the entire evidence on the record, we find that in this case the appellant is aged about 72 years at the time of recording of his statement on 12.04.2022, therefore, at the time of occurrence, he was about 68 years old, had his medical examination been conducted, which was quite possible because he was immediately arrested after the occurrence, the prosecution would have collected some vital evidences in order to prove the truth but that has not been done. This has seriously prejudiced the defence of the appellant. The medical evidence has shown that it is not a case of penetrative sexual act. The only evidence on which the prosecution case remains is that of the victim, who is a child witness, but her competence has not been duly tested. Further, this Court finds that while the occurrence is of 12.06.2018, the learned trial court has while awarding sentence, proceeded to apply the amended/substituted



provision of the POCSO Act, which came into effect from 16<sup>th</sup> August, 2019.

**36.** In ultimate analysis, we are of the opinion that it would not be safe to sustain the conviction of the appellant on the basis of the sole testimony of the child witness.

**37.** We therefore, set aside the impugned judgment and order of the learned trial court. The appellant is acquitted of the charges giving him benefit of doubt. He is in jail, therefore, he shall be released forthwith if not wanted in any other case.

**38.** This appeal is allowed.

**39.** Let a copy of the judgment together with the trial court's records be sent down to learned trial court.

**40.** We acknowledge the assistance rendered by Mr. Prashant Kumar, learned Advocate as Amicus Curiae for the appellant. A consolidated sum of Rs. 15,000/- (Rupees Fifteen Thousand/-) shall be paid to the learned Amicus Curiae by the Patna High Court Legal Services Committee within one month from the date of receipt of a copy of this judgment.

**(Rajeev Ranjan Prasad, J)**

**(Soni Shrivastava, J)**

Rishi/-

AFR/NAFR	
CAV DATE	
Uploading Date	13.03.2026
Transmission Date	13.03.2026

