

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.625 of 2023**

Arising Out of PS. Case No.-33 Year-2018 Thana- MAHILA P.S. District- Sheohar

Dilip Ram @ Dilip Kumar, S/o Dinesh Ram, Resident of village-Chhatauni,
P.S.-Tariyani, Distt.-Sheohar.

... .. Appellant

Versus

1. The State of Bihar
2. Ms. X

... .. Respondents

Appearance :

For the Appellant	:	Mr. Mahendra Thakur, Advocate Mr. Krishna Prabhat, Advocate
For the State	:	Mr. Binod Bihari Singh, Addl.PP
For the Resp No. 2	:	None

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 23-03-2026

Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State.

2. Despite service of notice on respondent no. 2/ victim,
the victim chose not to enter appearance to oppose this appeal.

3. The present appeal has been preferred for setting
aside the judgment of conviction dated 07.06.2023 (hereinafter
referred to as the ‘impugned judgment’) and the order of sentence
dated 12.06.2023 (hereinafter referred to as the ‘impugned
order’) passed by the learned 1st Additional Sessions Judge-cum-
Special Judge, Sheohar (hereinafter referred to as the ‘learned



trial court') in POCSO Case No. 33 of 2018 arising out of Sheohar Mahila P.S. Case No. 33 of 2018. By the impugned judgment, the appellant has been convicted for the offences punishable under Section 4 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act') and Section 376(2) (i) of the Indian Penal Code (in short 'IPC') and by the impugned order, he has been ordered to undergo rigorous imprisonment for twenty years with a fine of Rs.10,000/- under Section 4 of the POCSO Act and in default of payment, he has to further undergo simple imprisonment for twelve months.

Prosecution Case

4. The prosecution case is based on the written application of the informant (PW-3). In her written application, she has stated that this appellant committed rape eight months ago on her minor daughter (PW-4) aged 14 years on the pretext of marriage and when she became pregnant and told this fact to the appellant, he started making distance. She has further alleged that when she told this fact to the family of the appellant then the father of the appellant and, his uncles, namely, Ravindra Ram, Musafir Ram, Vishwanath Kumar got angry and the father of the appellant asked the informant to leave and threatened her to kill her family and her daughter, if she would tell this fact to anyone.



The informant also alleged that the accused persons assaulted them.

5. On the basis of this written application, Sheohar Mahilla P.S. Case No. 33 of 2018 dated 26.09.2018 was registered under Section 4 of the POCSO Act and Sections 323, 341, 376(2)(i), 504 and 506 of the IPC against accused persons, namely, (1) Dinesh Ram, (2) Ravindra Ram, (3) Musafir Ram, (4) Vishwanath Kumar and (5) Dilip Kumar (this appellant). After investigation police submitted chargesheet being Chargesheet No. 01/19 dated 10.01.2019 against accused Dilip Kumar under Sections 376(2)(i), 323, 504, 506 IPC and Section 4 of the POCSO Act and against rest of the accused persons under Sections 341, 323, 504, 506/34 IPC. Learned trial court vide order dated 07.02.2019 took cognizance of the offences punishable under Sections 376(2)(i), 323, 504, 506 IPC and Section 4 of the POCSO Act against accused Dilip Kumar and against rest of the accused under Sections 341, 323, 504, 506/34 IPC.

6. Charges were read over and explained to the accused persons in Hindi to which they pleaded not guilty and claimed to be tried. Accordingly, vide order dated 21.09.2019, charges were framed against accused Dilip Ram under Sections 376(2)(i), 323, 504, 506 and Section 4 of the POCSO Act and against rest of the



accused, namely, (1) Dinesh Ram, (2) Ravindra Ram, (3) Musafir Ram and (4) Vishwanath Ram charges were framed under Sections 341, 323, 504, 506/34 IPC.

7. In course of trial, the prosecution examined as many as nine witnesses and exhibited several documentary evidences. The names of the prosecution witnesses and the exhibits are being shown hereunder in a tabular form:-

List of Prosecution Witnesses

PW-1	Aunt of the victim
PW-2	Uncle of the victim
PW-3	Mother of the victim (Informant)
PW-4	Victim
PW-5	Dr. Ravindra Kumar Singh
PW-6	Shanti Devi
PW-7	Dr. Anjana Prasad
PW-8	Dr. Birendra Kumar
PW-9	Anita Devi

List of Exhibits on behalf of Prosecution

Exhibit '1'	Signature of PW-4 on her 164 CrPC Statement
Exhibit '2'	Medical Report
Exhibit '2/1'	Signature of Dr. Anjana Prasad on the medical report
Exhibit '2/2'	Signature of Dr. Birendra Kumar on the medical report
Exhibit '3'	Signature of Officer Incharge on FIR
Exhibit '3/1'	Endorsement of SHO on FIR
Exhibit '4'	Signature of the I.O. on the Chargesheet



8. Thereafter, the statements of the accused persons were recorded under Section 313 of the CrPC. The appellant in his 313 CrPC statement denied the allegations. The appellant also stated that the victim had mentioned her date of birth by lowering it.

Findings of the Learned Trial Court

9. Learned trial court after analysing the evidences available on the record found that the victim (PW-4) in her deposition stated that she suffered vomiting and prior to that Dilip Ram did wrong act with her many times. Learned trial court observed that the appellant committed penetrative sexual assault upon the victim and as such, she became pregnant.

10. Learned trial court, on the point of age of the victim found that the victim had in her 164 CrPC statement mentioned her age as 14 years. The mother (PW-3) of the victim has mentioned the date of birth of the victim as 05.02.2005. The victim (PW-4) herself stated her date of birth as 02.02.2005. There is no cross-examination on behalf of the defence to PW-3 and PW-4 regarding the date of birth of the victim. Learned trial court found that the Doctors (PW-5) and (PW-7) have stated that the Medical Board found the age of the victim about 16-18 years on the date of her medical examination i.e. on 27.09.2018.



Learned trial court also found that the school transfer certificate of the victim is on the record showing her date of birth as 02.02.2005. Therefore, learned trial court opined that the victim was minor and her age was about 14 years and below 16 years.

11. Learned trial court held that in the present case, the evidence of the victim (PW-4) is clinching in nature and inspires confidence and there is nothing on the record to believe that the evidence of PW-4 is not trustworthy as also the 'DNA' report shows that the Appellant is the biological father of the child born to the victim.

12. Learned trial court after considering all the facts and circumstances of the case held that the prosecution has succeeded in proving the charges punishable under Section 4 of the POCSO Act and Section 376(2)(i) IPC against accused Dilip Ram @ Dilip Kumar beyond all reasonable doubts, therefore, he is convicted and sentenced accordingly. However, the prosecution has failed to prove the charges under Sections 323, 341, 504 and 506 IPC against all other accused persons and they have been acquitted of these charges.

Submissions on behalf of the Appellant

13. Learned counsel for the appellant while assailing the impugned judgment and order submits that the learned trial



court has committed error in convicting the appellant under Section 4 of the POCSO Act and Section 376(2)(i) IPC.

14. Learned counsel for the appellant submits the school leaving certificate of the victim shows her date of birth as 02.02.2005. The school leaving certificate is on the record but has not been exhibited. Learned counsel further submits that the school transfer certificate in itself is not a proof of date of birth within the scheme of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the J.J. Act').

15. Learned counsel for the appellant submits that there are contradictions in 164 CrPC statement of the victim and her deposition in course of trial, particularly, with regard to the manner of occurrence.

Submissions of the State

16. Learned Additional Public Prosecutor the State has defended the impugned judgment and order. Learned Additional Public Prosecutor for the State submits that the evidence of the victim is clinching in nature and inspires confidence and there is no reason to disbelieve her.

17. Learned Additional Public Prosecutor submits that the DNA report shows that the appellant is the biological father of



the child born to the victim who is minor aged about 14 years. Learned APP further submits that the defence did not cross-examine the victim or the informant regarding the age of the victim.

Consideration

18. We have heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also perused the trial court's records. The first and foremost question which arises in this case is as to whether the prosecution has been able to establish that the victim is falling within the definition of word 'child' as envisaged under Section 2(d) of POCSO Act. It appears on going through the impugned judgment that the learned trial court relied upon a school transfer certificate of the victim which is said to be on the record showing her date of birth as 02.02.2005. The school transfer certificate has not been exhibited in evidence. We are afraid that in absence of the school transfer certificate having been exhibited through a competent witness, the same could not have been taken into consideration. Moreover, we are also of the opinion that school transfer certificate in itself is not a proof of date of birth within the scheme of Section 94 of the J.J. Act.



19. The above opinion of this Court leads to a further examination of material on the record with regard to the age of the victim which is in form of the medical examination report of the victim. The Doctor (PW-5) has proved the medical examination report (Exhibit '2'). As per the opinion of the Medical Board, the victim was aged between 16 and 18 years and she was carrying thirty weeks pregnancy at the time of medical examination. If this age opinion by the Medical Board is related back to a period of eight months, the radiological age of the victim may be between 15-17 years at the time when the appellant had established physical relationship with her. At this stage, when we apply the plus/ minus two years rule in view of the judicial pronouncements of the Hon'ble Supreme Court in the case of **Rajak Mohammad v. State of H.P.** reported in **(2018) 9 SCC 248** and the judgment of the Hon'ble Delhi High Court in the case of **Court on its own Motion vs. NCT of Delhi** reported in **2024 SCC Online Delhi 4484** and take the upper extremity of age, we would conclude that the prosecution is not able to establish by adducing cogent evidence that the victim was a 'child' within the meaning of Section 2(d) of the POCSO Act. The upper extremity of the age in that circumstance would go to 17-19



years. We are, therefore, of the considered opinion that the charge framed under Section 4 of the POCSO Act would not succeed.

20. The learned trial court has held the appellant guilty of the charge under Section 376(2)(i) IPC. Learned counsel for the appellant has shown to this Court that clause (i) under Sub-Section (2) of Section 376 IPC was omitted by the Act 22 of 2018 vide Section 4 with retrospective effect from 21.04.2018. In this case, the date of occurrence is beyond 21.04.2018, therefore, the case would not be covered under this provision. We would not agree with this submission of learned counsel for the appellant for the reason that as per the prosecution evidence the victim had suffered vomiting in the month of September, 2018 and her medical examination was conducted on 27.09.2018 when it was found that she was carrying a pregnancy of thirty weeks. This thirty weeks period would relate back to a date prior to 21.04.2018, therefore, on the date of occurrence, the provision was very much in existence.

21. We have perused the evidences available on the record. In the present case, the victim has been examined as PW-4. She has stated that the appellant had forcefully established physical relationship with her. Learned counsel for the appellant has tried to impress upon this Court by showing 164 CrPC



statement of the victim and taking a plea that there are some contradictions in the statement with regard to the manner of occurrence, particularly, about the threat given to the victim, however, we are not impressed with this submission because any minor deviation from the statement made under Section 164 CrPC by the victim would not take away the whole prosecution case. We find that while in her 164 CrPC statement, she has stated that the appellant had entered into her house and he had on the allurement of marrying her asked her to do whatever he says and thereafter, he had established physical relationship with her. In course of trial, the victim has stated that the appellant had committed rape on her by showing a knife. This is the only deviation from her statement, at best it may be an improvement but this would not take away the prosecution case because the defence has not come out with a plea that it was a consented relationship. Nowhere in the pattern of cross-examination of the prosecution witnesses or in the statement under Section 313 CrPC, the appellant has come out with a plea that the victim was major and the physical relationship was consented. In fact, the appellant straightaway denied the allegations of having established physical relationship with the victim and took a plea of alibi that at the time of occurrence, he was engaged in studies



at her *Bua's* place. In our considered opinion, the victim in this case would stand as a sterling witness and there is no reason to disbelieve her testimony.

22. In ultimate analysis of the entire evidences available on the record, we are of the considered opinion that the charge under Section 376(2)(i) of the IPC stands established.

23. So far as the award of sentence to the appellant is concerned, the learned trial court has awarded a sentence of twenty years rigorous imprisonment under Section 4 of the POCSO Act with a fine of Rs.10,000/- and in case of default of payment of fine a simple imprisonment for twelve months but no separate sentence has been awarded under Section 376(2)(i) IPC. Since the charge under Section 4 of the POCSO Act has not been found proved and the appellant is being acquitted giving benefit of doubt under the said charge, the sentences imposed under the said provision would automatically go.

24. This Court has heard learned counsel for the appellant and the learned Additional Public Prosecutor for the State also on the point of sentence under Section 376(2)(i) IPC. Keeping in view the materials available on the record and the sentence provided under Section 376 IPC, we award a sentence of twelve (12) years rigorous imprisonment with a fine of



Rs.25,000/-, in default of payment of fine, the appellant shall undergo simple imprisonment for a period of six months.

25. The District Legal Services Authority, Sheohar shall pay the compensation amount to the victim in terms of the judgment of the learned trial court as early as possible preferably within a period of three months from the date of receipt/production of a copy of this judgment.

26. This appeal is partly allowed.

27. Let a copy of this judgment along with the trial court's records be sent down to learned trial court.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
Uploading Date	25.03.2026
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