

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1019 of 2017**

Arising Out of PS. Case No.-235 Year-2015 Thana- DALSINGHSARAI District-
Samastipur

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PAPPU SHARMA Son of Late Rajendra Sharma, Resident of Village-
Rasidpur, P.S.- Bachhwara, District- Begusarai.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Pravin Kumar Pandey, Adv.

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE KHATIM REZA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 23-04-2024

1. Heard Mr. Pravin Kumar Pandey, the learned Advocate for the appellant / Pappu Sharma and Mr. Dilip Kumar Sinha, the learned APP for the State.
2. The sole appellant has been convicted for the offence under Section 376 IPC and Section 6 of



the POCSO Act, 2012 vide judgment dated 13.07.2017 passed by the learned Special Judge, POCSO Act, Samastipur in Dalsingsarai P.S. Case No. 235/2015 /General Registration No. 468/2015/Register No. 1410465/15. By order dated 18.07.2017, the appellant has been sentenced to undergo imprisonment for life along with a fine of Rs. 1,00,000/- and in default of payment of fine, to further suffer R.I. for one year for the offence under Section 6 of the POCSO Act, 2012. No separate sentence has been awarded for the offence under Section 376 IPC.

3. An eight year old girl is alleged to have been sexually violated by the appellant.
4. The mother of the victim (PW4) had lodged the F.I.R. on 14.06.2015 alleging that on 13.06.2015, there was a religious congregation in front of her house under a *peepal* tree, where many persons of the village had assembled. She



along with her daughter (victim) and a toddler slept on a cot by around 8.00 P.M. At about 12 'O' Clock in the night, when she got up from her sleep, she did not find her daughter (victim) around. She came out in search of her daughter but to no avail. Shortly thereafter, she found her daughter weeping in the garden. When she was asked, she disclosed before PW4 that a musician of the band party had brought her at that place and had sexually assaulted her. She was suffering pain in her private parts and when she tried to micturate, she started bleeding. The accused person had run away. PW4 lifted her daughter and brought her home and inquired about the musician in the band party. She came to know that one Pappu Sharma/appellant of Begusarai was member of the band party. The appellant was confronted with the afore-noted allegation but he denied and ran away. The local *Mukhiya* was informed about the



occurrence, who in turn informed the police. The victim was brought to Dalsingsarai hospital and after her treatment, PW4 lodged the F.I.R. with the Mahila Police in Samastipur.

5. On the basis of afore-noted fardbeyan of PW4, a case vide Dalsingsarai P.S. Case No. 235/2015 dated 14.06.2015 was registered for investigation against the appellant under Section 376 IPC and Section 4 of the POCSO Act, 2012.
6. Since the appellant was the only person about whom there was a doubt that he had committed the offence, he was chargesheeted and put on trial.
7. The Trial Court after having examined nine witnesses on behalf of the prosecution convicted and sentenced the appellant as aforesaid.
8. From the deposition of PW4 before the Trial Court, it appears that it was only on her guesswork that she had raised allegation against the



appellant. In her examination in chief, she has stated that somebody had taken her daughter and had sexually violated her. On being asked, the victim had told her that one boy had taken her to the garden and had physically violated her. During cross-examination, she admitted that her daughter only said that one musician had taken her to the garden. It was found out that the musician playing in the band party was Pappu Sharma (the appellant). His name was not taken by the victim. PW4 did not even recognize the appellant.

9. The victim herself was examined as PW3. After testing her competence to depose through voir dire, the Trial Court recorded her statement. She completely denied that the appellant who was standing in the dock, had committed any wrong act with her. She recognized the appellant but in no uncertain terms stated that he was not the person, who had caused trouble to her.



10. The other witnesses, namely, Rajeshwar Rai (PW1) and Jai Prakash Yadav (PW2) have not supported the prosecution case and have been declared hostile.
11. The grandfather of the victim, namely, Shivan Das (W5) has even denied the factum of rape of his granddaughter.
12. Arvind Rai (PW6), a local furniture shop owner, has disclosed that he learnt about the occurrence and had seen the victim crying. The mother of the victim was also present there. There was nobody to help them. He helped the mother and the victim to reach out to the police. He also took the victim to a hospital at Dalsingsarai from where she was referred to Samastipur Sadar hospital for further treatment and medical examination. He but was absolutely unaware of the person who had committed the offence. Even the informant had not met him.



13. Neelam Devi (PW9), the Mukhiya, on being told about the occurrence, informed the local administration and had sent the victim to Dalsingsarai hospital. She did not recognize the appellant in the dock. In fact, no statement of hers was recorded by the police during the course of investigation.
14. The victim was examined by Dr. Pushpa Rani and Dr. Hemant Kumar Singh, who found her to be between 7 to 8 years of age and there being strong evidence of sexual assault on her.
15. Thus, there could be a possibility of the victim having been sexually violated but the accusation against the appellant was based on guess-work and some misgivings about his being the musician in the band party which was hired in the religious congregation. Had it not been the case, there would have been specific accusation against the appellant.



16. We have also examined the statement of the informant recorded under Section 164 Cr.P.C., who has stated that on the day of the occurrence, in the morning, while she was cooking food, one Tuttu Kumar was crossing through her house. Seeing him, her daughter (victim) shouted that he was the person, who had taken her in his lap and had sexually violated her. Aforesaid Tuttu Kumar was apprehended who was identified by the victim. However, when she was questioned in the night of the occurrence, she had spoken that some musician had done the wrong act.

17. Thus, it appears that it was only on the guess-work of the informant that the appellant was put on trial.

18. In face of the Doctors' evidence, there could be a little doubt that the victim was attempted to be violated but finding the accusation against the appellant to be absolutely without any basis, we



are constrained to set aside the judgment and order of conviction.

19. The appellant is acquitted of the charge.

20. Since the appellant is in jail, he is directed to be released forthwith unless his detention is required in connection with any other case.

21. The appeal stands allowed.

22. Interlocutory application/s, if any, also stands disposed of.

23. Let a copy of this order be communicated to the Superintendent of concerned jail for record and compliance.

24. Let the records of this case be returned to the concerned Trial Court.

(Ashutosh Kumar, J)

(Khatim Reza, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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