IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.196 of 2022

Arising Out of PS. Case No.-124 Year-2021 Thana- MAHILA P.S. District- Araria

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Raj Kumar Yadav, Son of Late Radheshyam Yadav, Resident of Kuwari, Ward No. 05, P.S. - Kuwari, O.P. District - Araria.

... ... Appellant.

Versus

The State of Bihar

... ... Respondent.

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Appearance :
For the Appellant : Mr. Sanjay Kumar Sharma, Advocate.
Mr. Kumar Ravish, Advocate.
For the State : Mr. Sujit Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
and
HONOURABLE MR. JUSTICE SANDEEP KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 03-04-2023

By this appeal, the appellant/convicted accused is challenging the Judgment and Order dated 15.12.2021 passed by the learned Special Judge under the Protection of Children from Sexual Offences Act, Araria, in Special POCSO Case No.36 of 2021, thereby convicting him of the offences punishable under Section 376 AB of the Indian Penal Code as well as under Section 4 of the Protection of Children from Sexual Offences Act (hereinafter referred to as the 'POCSO Act' for the sake of brevity). For the offence punishable under Section 376 AB of the Indian Penal Code, the appellant/convicted accused is sentenced to suffer rigorous imprisonment for life which is to

mean imprisonment for reminder of the natural life of the convict apart from imposition of fine of Rs.10,000/- and in default, to suffer simple imprisonment for ten days. In view of the provisions of Section 42 of the POCSO Act, no separate sentence came to be imposed for the offence punishable under Section 4 thereof. For the sake of convenience, the appellant shall be referred to in his original capacity as 'an accused'.

2. Facts leading to the prosecution of the accused can be gathered thus:

(a). According to the prosecution case, the accused by enticing the victim female child, who at the relevant time was eight years old, took her to the shop and then to the 'Bagaan' whereat he had committed penetrative sexual assault on her. After doing the act, the accused fled away. The victim female child, anyhow, returned to her house and disclosed the incident to her mother. She was then taken to the Primary Health Centre, Kursakanta, for medical treatment. Her father (P.W.7) then lodged report of this incident which took place on 22.09.2021 on the very same day and, that is how, Crime No.124 of 2021 came to be registered against the accused at Araria Mahila Police Station for the offences punishable under Section 376 AB of the Indian Penal Code as well as under Section 4 of the

POCSO Act. Wheels of investigations were then set in motion.

(b). During the course of investigation, the accused came to be arrested on 23.09.2021. Routine investigation followed. Statements of the witnesses came to be recorded and on completion of investigation, the chargesheet against the accused came to be filed on 20.11.2021 leading to the registration of the Special POCSO Case bearing number 36 of 2021 on the file of the learned Special Judge, Araria.

(c). On 14.12.2021, the learned trial court took cognizance of the offences alleged to have been committed by the accused. Then on the next day, i.e., on 15.12.2021, the charge came to be framed by the learned trial court. The police papers commonly known as the chargesheet came to be supplied to the accused on the very same day itself. Services of the Advocate from the panel of the Legal Aid came to be provided to the accused on the very same day. On that day, i.e., on 15.12.2021 itself, evidence of eight prosecution witnesses came to be recorded by the learned trial Court. Then the learned trial court proceeded to record statement of the accused under Section 313 of the Code of Criminal Procedure, 1973, on the very same day itself. On that day, i.e., on 15.12.2021, the learned trial court heard arguments and proceeded to pass the

impugned Judgment of conviction and resultant sentence on that day itself. In other words, on the day of framing of the charge itself, police papers were supplied to the accused and the entire trial came to be concluded on the very same day. That is how, by the impugned Judgment and Order of conviction and resultant sentence, the accused came to be convicted and sentenced as indicated in the opening paragraph of this Judgment.

3. We heard the learned counsel appearing for the appellant/accused at sufficient length of time. By relying on the Judgment rendered by this Court in the case of **Md. Major @ Mejar Vs. State of Bihar reported in 2022 (5) BLJ 302** (to which one of us-Justice A.M. Badar is a party), it is argued on behalf of the appellant that the impugned Judgment and Order is *per se* illegal in the light of provisions of Article 21 of the Constitution of India so also on account of breach of mandatory provisions of the Code of Criminal Procedure, 1973. It is further argued that the same is in blatant violation of the law laid down by the Hon'ble Supreme Court in the matter of **Anokhilal Versus State of Madhya Pradesh** reported in **(2019) 20 Superme Court Cases 196.**

4. The learned A.P.P. supported the impugned

Judgment and Order of conviction and resultant sentence by contending that the offence alleged against the appellant is held to be proved by the learned trial court on the basis of evidence adduced on record and, as such, the impugned Judgment requires no interference at the hands of this Court.

5. We have considered the submissions so advanced. We have also perused the record and proceedings including oral as well as documentary evidence adduced by the parties. We have also perused the impugned Judgment and Order passed on 15.12.2021 by the learned Special Judge, POCSO Act, Araria.

6. It is not in dispute that cognizance of the offence alleged against the accused was taken by the learned trial court on 14.12.2021. Undisputedly, on the very next day, i.e., on 15.12.2021, the learned trial court framed the charge for the offence punishable under Section 376 AB of the Indian Penal Code as well as under Section 4 of the POCSO Act. The records and proceedings reveal that the papers of investigation i.e., the chargesheet was supplied to the accused on the day of framing of the charge itself. The accused, as seen from the record, was not granted an opportunity to address the learned trial court on the question of framing of charge against him by according an opportunity to engage an Advocate of his choice to

defend him. Services of the Advocate from the panel of the Legal Aid came to be provided to the accused and, that is how, on the day of framing of the charge itself, i.e., on 15.12.2021, evidence of all the prosecution witnesses, eight in number, came to be recorded and on discharging those witnesses, the prosecution evidence came to be closed. Immediately, thereafter, i.e., on 15.12.2021 itself, statement of the accused under Section 313 of the Code of the Criminal Procedure, 1973, came to be recorded and by closing the defence evidence, on the very same day, i.e. on 15.12.2021, the impugned Judgment and Order came to be passed by recording the following sentence in the opening paragraph of the impugned Judgment itself:

> "It is not out of place to mention here that the case in hand has been disposed of within one day of its opening i.e. framing of charge"

7. In our considered opinion, ugly haste has been shown by the learned trial court in disposing the subject Special Case in one day itself by showing blatant disregard to the principles of natural justice as well as Article 21 of the Constitution of India apart from throwing the statutory provisions enacted for according fair trial to the accused found in the Code of Criminal Procedure, 1973. The very same

learned Trial Judge, in a similar manner, had passed similar Judgment in the case against accused therein namely Md. Major @ Mejar. It was impugned in an appeal before this Court and the Judgment rendered by this Court in the said matter squarely covers the case in hand. It would not be out of place to quote paragraphs-13, 15 and 18 of the said Judgment in the case of **Md. Major @ Mejar** (supra), the ratio of which is fully applicable to the case in hand. Paragraphs 13, 15 and 18 of the said Judgment rendered by this Court are quoted herein under:

> **"13.** We have already noted the provision of Section 207 of the Cr.P.C. found in Chapter-XVI of the Cr.P.C. dealing with commencement of proceedings, which mandates that in the proceedings instituted on a police report, the copy of the police report under Section 173, the FIR recorded under Section 154, statements recorded under Section 161, confessions and statements recorded under Section 164 and all documents etc. sought to be relied by the Prosecution for establishing the guilt of the accused are required to be supplied to him **WITHOUT DELAY.** To supplement this provision of Section 207 of the Cr.P.C. under its rule making power, the Patna High Court has framed Rules titled as 'Criminal Court Rules of the High Court of Judicature at Patna'. Rule 50 A thereof reads thus-
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> > **"50-A. Supply of Documents under Sections 173, 207 and 208 Cr.P.C.-**Every Accused shall

> be supplied with statements of witness recorded under Sections 161 and 164 Cr.P.C. and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer (I.O.) in accordance with Sections 207 and 208 Cr.P.C."

Thus Trial Courts in the State are again reminded by this Court to make strict compliance of Section 207, keeping in mind the object thereof to apprise the accused of allegations against him forthwith. This compliance is required to be done prior to hearing the parties on the point of framing of the charge i.e. prior to the stage as envisaged by Sections 227 & 228 of the Cr.P.C.

15. If the Charge is of grave, severe and complex nature, the accused is naturally required to be given sufficient time to prepare his defence after receipt of the charge sheet with complete papers of investigation and after being made aware of the exact charge against him by the Trial Court under Section 228 of the Cr.P.C. The above proposition flows from the entitlement of fair hearing which is applicable to all judicial proceedings. Procedural fairness is even otherwise essential for enabling the Judge for arriving at correct decision and the same is the mandate of Sections 207, 226, 227 and 230 of the Cr.P.C., Section 230 of the Cr.P.C. requires that after framing the charge, the case

should be adjourned and fixed at a later date for recording evidence of prosecution witnesses. The Trial Court, considering the extreme penalty to which the accused becomes liable in the case relating to the charge of grave nature, is always duty bound to fix the case for recording evidence of the prosecution after passage of few days after framing the charge in order to enable the accused to think carefully about the case and then to consult his Advocate, to instruct his Advocate and to prepare his defence after effective consultation with his Advocate. Having interaction by conference with his Advocate for this purpose is sine qua non for grant of fair trial to the accused. Therefore, procedural code i.e., the Cr.P.C. does not contemplate recording of evidence of prosecution witnesses immediately on the very same day after framing of the charge. On the contrary, it provides for posting the case on some later date for this purpose. It is expected of the trial Judge to see that the accused and particularly an under trial accused gets proper, full, meaningful and sufficient opportunity to defend himself by consulting his advocate and by instructing him appropriately. For adhering to the principles of natural justice, the Trial Court is therefore supposed to adjourn the case for recording evidence of prosecution after a gap of few days after framing of the charge. Ugly hurry

in recording evidence of prosecution immediately on the very same day after framing of the charge, particularly, when the accused is an under trial prisoner would defeat the ends of justice and can cause prejudice to both the parties. In many cases even the prosecution has to secure attendance of witnesses through the process of the Court. Principles of natural justice, therefore cannot be perverted to achieve the very opposite end, by starting recording of evidence of prosecution after framing of the charge on the very same day as in such eventuality, sometimes even the prosecuting agency can be prejudiced. For all these reasons, strict compliance of Sections 207, 226, 227 and 230 of the Cr.P.C. is mandatory and right conferred on the accused at these stages cannot be denied to him by the trial Judge.

18. Now let us examine the law laid down by the Supreme Court dealing with adherence to principles of natural justice and procedural fairness required to be adopted by the learned Trial Court while conducting criminal trial. Article 21 of the Constitution guarantees life and personal liberty to all persons. It read thus:

"No person shall be deprived of his life or liberty except according to procedure established by law".

In the matter of **Anokhilal** (Supra), the Supreme

Court has considered the question as to how and to what extent the procedure established by law is required to be followed while trying the accused in criminal case. Following are relevant observations of the Supreme Court:

"21. In the present case, the Amicus Curiae, was appointed on 19-2-2013, and on the same date, the counsel was called upon to defend the accused at the stage of framing of charges. One can say with certainty that the Amicus Curiae did not have sufficient time to go through even the basic documents, nor the advantage of any discussion or interaction with the accused, and time to reflect over the matter. Thus, even before the Amicus Curiae could come to grips of the matter, the charges were framed.

22. The provisions concerned viz. Sections 227 and 228 of the Code contemplate framing of charge upon consideration of the record of the case and the documents submitted therewith, and after "hearing the submissions of the accused and the prosecution in that behalf". If the hearing for the purposes of these provisions is to be meaningful, and not just a routine affair, the right under the said provisions stood denied to the appellant.

23. In our considered view, theTrial Court on its own, ought to have adjourned the matter for some time so that the Amicus Curiae could have had the advantage of sufficient time to prepare the matter.

The approach adopted by theTrial Court, in our view, may have expedited the conduct of trial, but did not further the cause of justice. Not only were the charges framed the same day as stated above, but the trial itself was concluded within a fortnight thereafter. In the process, the assistance that the appellant was entitled to in the form of legal aid, could not be real and meaningful.

25. In V.K. Sasikala v. State [(2012) 9 SCC 771 : (2013) 1 SCC (Cri) 1010] a caution was expressed by this Court as under : (SCC p. 790, para 23.4)

"23.4. While the anxiety to bring the trial to its earliest conclusion has to be shared it is fundamental that in the process none of the well-entrenched principles of law that have been laboriously built by illuminating judicial precedents are sacrificed or compromised. In no circumstance, can the cause of justice be made to suffer, though, undoubtedly, it is highly desirable that the finality of any trial is achieved in the quickest possible time."

26. Expeditious disposal is undoubtedly required in criminal matters and that would naturally be part of guarantee of fair trial. However, the attempts to expedite the process should not be at the expense of the basic elements of fairness and the opportunity to the accused, on which postulates, the entire criminal administration of justice is founded. In the pursuit for expeditious disposal, the cause of justice

must never be allowed to suffer or be sacrificed. What is paramount is the cause of justice and keeping the basic ingredients which secure that as a core idea and ideal, the process may be expedited, but fast tracking of process must never ever result in burying the cause of justice.

27. In the circumstances, going by the principles laid down in Bashira v. State of U.P., [(1969) 1 SCR 32 : AIR 1968 SC 1313 : 1968 Cri LJ 1495], we accept the submission made by Mr Luthra, the learned Amicus Curiae and hold that the learned counsel appointed through Legal Services Authority to represent the appellant in the present case ought to have been afforded sufficient opportunity to study the matter and the infraction in that behalf resulted in miscarriage of justice. In light of the conclusion that we have arrived at, there is no necessity to consider other submissions advanced by Mr Luthra, the learned Amicus Curiae.

28. All that we can say by way of caution is that in matters where death sentence could be one of the alternative punishments, the courts must be completely vigilant and see that full opportunity at every stage is afforded to the accused".

This makes it clear that the trial Judge is required to follow the procedural law meticulously and scrupulously at each and every stage of criminal trial in order to see that fair trial is granted to the accused."

8. In the result, there is no alternative but to hold that the learned trial court has failed to follow due process of law while convicting the accused and imposing him the sentence as indicated in the opening paragraph of this Judgment. Because of flagrant violation of principles of nature justice and blatant disregard to the mandatory statutory provisions of the Code of Criminal Procedure, 1973, the impugned Judgment cannot be sustained. Rather the trial itself is vitiated. The manner in which the trial was commenced, conducted and concluded by the learned trial court clearly displays and demonstrates glaring abuse of prescribed procedure of conducting the criminal trial and, therefore, there is no alternative but to direct for De-novo trial of the accused from before the stage of framing of the charge as breach of mandatory provisions of law commenced before framing of the charge causing miscarriage of justice. Hence, the following order:

I. The impugned Judgment and Order dated 15.12.2021 passed by the learned trial court, i.e., Special Judge, POCSO, Araria in Special POCSO Case No.36 of 2021 between the parties is quashed and set aside.

II. The instant Criminal Appeal filed by the accused is partly allowed to the extent indicated herein before.

III. Since the trial is vitiated, the matter is remanded to the learned trial court for fresh trial from before the stage of framing of the charge.

9. We make it clear that we have not expressed any opinion regarding the merits of the case and our observations are limited only to the extent that the accused was not awarded fair trial in the instant case.

(A. M. Badar, J)

(Sandeep Kumar, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	09.01.2023.
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