

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.234 of 2019**

Arising Out of PS. Case No.-47 Year-2016 Thana- MAHILA P.S. District- Saharsa

JAYKANT KUMAR @ JAYKANT KUMAR SINGH S/o Nand Kishore
Singh @ Bhutto Singh R/o Bahuarba, P.S.- Salkhua, District- Saharsa.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Indradeo Prasad, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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

Date : 01-08-2024

1. Heard Mr. Indradeo Prasad, the learned Advocate for the appellant and Mr. Sujit Kumar Singh, the learned APP for the State.
2. The appellant has been convicted for the offences under Section 376 of Indian Penal Code and Section 6 of the POCSO Act, 2012 by judgment dated 21.01.2019 passed by the learned 1st Additional Sessions Judge -cum-Special Judge, POCSO Act, Saharsa in Case No. POCSO 24/2016 arising out of Mahila P.S. Case No. 47/2016. Curiously, by order



dated 31.01.2019, the appellant has been sentenced to undergo R.I. for 12 years along with a fine of Rs. 10,000/-for each of the offence and in default of payment of fine, he has been directed to suffer R.I. for six months for each on each of the counts.

3. The minimum mandatory sentence under Section 6 of the POCSO Act, 2012 is twenty years.
4. The appellant is said to have impregnated a 14 years old girl. The victim had delivered a child who at the time of trial was two years old.
5. The victim herself lodged a written report addressed to the Officer-in-Charge of Mahila Police Station on 14.06.2016 alleging that the appellant, her neighbour, had been subjecting her to sexual intercourse for the last six months on the pretext of marrying her.
6. At the time of lodging of the written report, she was "quick with the child". On 13.06.2016, it has been alleged by her that when she went to the appellant to press for the marriage, she was assaulted, abused



and thrown out of the house. It was then that she informed her mother, who brought her to the Mahila Police Station.

7. On the basis of the afore-noted written report, a case vide Mahila (Bakhtiyarpur) P.S. Case No. 47/16 dated 14.06.2016 was registered for investigation for the offences under Sections 376, 323, 504 of the Indian Penal Code and Section 4 of the POCSO Act, 2012.
8. The police after investigation submitted charge-sheet whereupon the appellant was tried for the offences.
9. The Trial Court, after having examined six witnesses on behalf of the prosecution and one on behalf of the defense, convicted and sentenced the appellant as aforesaid.
10. The victim has turned volte-face at the Trial. As PW1, she has deposed before the Trial Court that the appellant used to call her at his home and rape her. On 13.06.2016, she had informed the appellant that



she was carrying a pregnancy of four months and there the appellant must marry her. This infuriated him and he abused and assaulted her. This was narrated by the victim to her mother who got a written report drafted by one Samir Kumar (PW6) and went to the police station. Thereafter, she was subjected to medical examination at Saharsa and Bhagalpur. She also gave her statement under Section 164 Cr.P.C. She has disclosed before the Trial Court that the name of the child that she had given birth to is Akash Kumar, who is around two years of age. However in her cross-examination, she had an absolutely different story to narrate. Though, she admitted before the Trial Court that the appellant is a neighbour but she did not know anything about him. Some of her co-villagers were making efforts for her marriage and in order to pressurize the appellant to marry her, the name of the appellant was provided by the villagers and therefore she had lodged this case against him. She was very specific in her statement before the Trial Court that



the name of the appellant was taken on the prompting of others and that the appellant had not committed rape on her.

11. Similarly, the mother of the victim (PW2) also in her cross-examination has denied that the appellant had impregnated her daughter. She also supported the victim in stating before the Trial Court that the appellant was named on the asking of the co-villagers. The village in which she and the victim reside is faction-ridden and that she did not even know about the appellant.

12. The Investigator of this case, namely, Arti Singh (PW3) had nothing substantial to offer to the Court except for the process which she undertook in the investigation of the case. In her cross-examination, she has stated that the victim, at the time of lodging the case, had informed her that she was carrying a pregnancy of four weeks. The medical examination also proved that the victim was pregnant. However, she was candid enough to admit that no document or



evidence was furnished by the victim or her family members regarding the accusation against the appellant. She was not informed that during the course of time, the victim had delivered a baby. Nothing was investigated further by PW3.

13. The victim was examined by Dr. Ravindra Mohan (PW4) who had found her to be pregnant. However, there was no sign of recent sexual intercourse as no spermatozoa either dead or alive was seen in the vaginal swab. The conclusive opinion of PW4, therefore, was that the victim was pregnant and her age was below 18 years. This statement was on the basis of the report of the department of Radiology, J.L.N.M.C.H, Bhagalpur.

14. PW4 was recalled for further cross-examination, when she stated that at the time of examination, the victim was pregnant for over eight months. It, therefore, appears that the victim was in the very advanced stage of pregnancy when she had chosen to file the case against the appellant.



15. Awdhesh Kumar Singh (PW5) another witness has not supported the prosecution case and has been declared hostile.
16. Samir Kumar (PW6), a labourer by profession, was literate enough to draft the written report on behalf of the victim. In 2016 Panchayat Elections, he was a contender for the post of Mukhiya but had lost to one Anil Mahant. He had no idea about the occurrence alleged in the written report. His only source of information was the victim herself who had asked him to draft the written report. Apart from this, he had never heard of any such occurrence in his village.
17. One Navneet Singh, who has been examined as DW1 spoke about the good moral character of the appellant. He also knew the fact that the victim is an unwed mother of a child. DW1 is one of the panches of the Panchayat in which the village of the victim is situated.
18. It is really queer to find that even though the



victim has delivered a baby but at the Trial, she has made a somersault and has stated that the appellant was not the father of her child. All the allegations against the appellant were denied by the victim and her mother as well.

19. In this context, we have also examined the statement of the victim under Section 164 Cr.P.C. The tenor of the statement made before the learned Magistrate again makes the accusation very doubtful. She had disclosed her age before the Magistrate also as 14 years. She was caught by the appellant at the crossing and was brought to his home where he promised to marry her. The victim did not respond. She was then allowed to go by the appellant. After the demise of her father, she told the appellant to marry her but he denied. She was also assaulted at the house of the appellant. In the afore-noted 164 statement she has but alleged that the appellant had been subjecting her to sexual intercourse for last six months. The sexual encounters had taken place in the



school and in the house of the appellant. She had also informed the Magistrate that she was pregnant for the last four months.

20. The story-line suggested by the prosecution initially, does not fit in the claim of the victim that the appellant had impregnated her and then refused to marry her. There could be a possibility of the victim and her mother, with the support of the villagers, putting pressure on the appellant to marry her as she had already become pregnant by that time.

21. While going through the evidence on record, we have also found that no effort was made by the prosecution to prove that the victim was less than 18 years of age. Though no objection has been raised regarding the assessment of the age of the victim and consequent assuming of jurisdiction of the Special Court to try this case, but on an overall analysis, we find that even the age of the victim has not been proved. She, at the time of her medical examination was already carrying a pregnancy of eight months and



was found less than 18 years of age.

22. It has been urged on behalf of the appellant that perhaps, if the appellant was a complete stranger to the victim and her mother, then there is a possibility of the victim and appellant seeing each other, being neighbours and co-villagers.

23. Was she minor at that time is the question which ought to have been determined by the Trial Court specially or else the case would fall in some other category of offence, namely, reneging on the promise of marriage.

24. The victim and her mother do not appear to be the sterling witnesses specially in view of their turning around and giving clean chit to the appellant, even though the victim as at the time of Trial had already delivered a child.

25. The accusation against the appellant, therefore, has become very doubtful.

26. Giving benefit of doubt to the appellant, we set aside the judgment of conviction and order of sentence



and set the appellant at liberty.

27. The appeal stands allowed.
28. The appellant is directed to be released from jail forthwith if not required or detained in connection with any other case.
29. Interlocutory application/s, if any, also stands disposed of.
30. Let a copy of this judgment be communicated to the Superintendent of concerned jail for record and compliance.
31. Let the records of this appeal be also returned to the concerned Trial Court forthwith.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

sunilkumar/-

AFR/NAFR	NAFR
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