

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.369 of 2023**

Arising Out of PS. Case No.-49 Year-2021 Thana- MAHILA P.S. District- Muzaffarpur

Santosh Kumar Son of Late Nawal Singh @ Nawal Kishor Singh Resident of village - Sabha, P.S. - Sakra, Distt. - Muzaffarpur

... .. Appellant

Versus

1. The State of Bihar
2. X, C/o [REDACTED] R/o Vill - Sabha, P.S. - Sakra, Distt.- Muzaffarpur

... .. Respondents

Appearance :

For the Appellant/s : Mrs. Bela Singh, Advocate

For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 30-10-2025

Heard Mrs. Bela Singh, learned counsel for the appellant. Learned Additional Public Prosecutor for the State is not present.

2. This appeal is arising out of judgment of conviction dated 13.03.2023 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 14.03.2023 (hereinafter referred to as the 'impugned order') passed by learned learned 7th Additional Sessions Judge-cum-Special Judge, POCSO (W) Muzaffarpur (hereinafter referred to as the 'learned trial court') in



G.R. No. 61 of 2021 arising out of Mahila P.S. Case No. 49 of 2021.

3. By the impugned judgment, the learned trial court has been pleased to convict the appellant of the charges under Section 376 of the Indian Penal Code (in short 'IPC') and Section 6 of the Protection of Children from Sexual Offences (in short 'POCSO') Act and ordered to undergo rigorous imprisonment for 20 years and a fine of Rs. 50,000/- and in default of payment of fine, the appellant has to undergo imprisonment of one year.

Prosecution case

4. The prosecution case is based on the written complaint submitted by the informant (victim) to the Station House Officer (SHO) of Mahila Police Station on 24.05.2021. In her written complaint, the victim has stated that she is aged about fourteen years. She has alleged that adjoining to her house, there is house of Ramsevak Singh of her village in which no one resides. On 24.04.2020, informant's cousin brother (the appellant), on the pretext of marriage, took her to the house of Ramsevak Singh and committed rape upon her. She is carrying pregnancy due to this act. She has further alleged that the appellant is continuously indulged in raping her.



5. After investigation of the case, police submitted a chargesheet against the appellant vide Chargesheet No. 64 of 2021 dated 04.07.2021 under Sections 341, 342, 493 and 376 of IPC and Sections 4 and 6 of the POCSO Act. Cognizance of the offences was taken by the learned Special Court, POCSO on 12.07.2021 under Sections 341, 342, 493 and 376 IPC and Sections 4 and 6 of the POCSO Act. Charges were read over and explained to the appellant in Hindi to which he pleaded not guilty and claimed to be tried. Accordingly, vide order dated 03.09.2022, charges were framed under the same sections against the appellant on.

6. The prosecution examined altogether seven witnesses and placed on record nine documentary evidences. The list of the witnesses and the documentary evidences produced on behalf of the prosecution is as under:-

PW-1	Mother of the Victim
PW-2	Victim
PW-3	Ashok Kumar
PW-4	Bina Devi
PW-5	Ramsevak Singh
PW-6	Kalpana Adhikari I.O.
PW-7	Dr. Mukul Kumar

Exhibit-1/PW-1	Photocopy of the School Transfer Certificate of the victim
Exhibit-2	Written application of the informant
Exhibit-3	Signature of the SHO on written application



Exhibit-4	Signature of the SHO on last page of FIR
Exhibit-5/ PW-6	Photocopy of the School Transfer Certificate of the victim
Exhibit-6	Signature of I.O. on chargesheet
Exhibit-7	Ultrasonography report of the victim dated 29.05.2021
Exhibit-8	Ultrasonography report of the victim dated 16.06.2021
Exhibit-9	Section 164 CrPC statement of the victim

7. It appears from the record that the learned trial court recorded the statement of the accused-appellant on 17.02.2023 through video conferencing from jail, thereafter the evidence of the defence was closed on the request of the defence. The trial court proceeded to examine the evidences available on the record and after appreciation of the evidences, the trial court came to a conclusion that the prosecution has proved the foundational facts of this case beyond reasonable doubt against the accused-appellant, hence the appellant is guilty under Section 376 IPC and Section 6 of the POCSO Act.

8. In course of hearing of the appeal, learned counsel for the appellant brought to the notice of this Court that the statement recorded under Section 351 of the Bharatiya Nagarik Suraksha Sanhita (in short 'BNSS') (earlier Section 313 of the CrPC) is not available on the record. This Court perused the entire ordersheets of the trial court and found that the statement was recorded on



17.02.2023 through video conferencing. In view of what transpired from the ordersheet of the trial court, this Court *vide* its order dated 24.09.2025 directed the learned Principal District and Sessions Judge, Muzaffarpur to get the statement of the accused under Section 313 of the CrPC traced and send to this Court at the earliest. This Court also observed that this should have been pointed out by the concerned Section where paperbooks were prepared. The order dated 24.09.2025 was communicated to the learned Principal District and Sessions Judge, Muzaffarpur *via* email communication, however, the statement of the accused under Section 313 CrPC could not be traced.

9. The learned Principal District and Sessions Judge, Muzaffarpur addressed a letter bearing Number 6692/E dated 10.10.2025 to the Assistant Registrar (Judicial) of this Court and prayed for two weeks further time to allow to trace the statement of the accused and make available the same to this Court. The request of the learned Principal District and Sessions Judge, Muzaffarpur was accepted by this Court *vide* order dated 13.10.2025. Two weeks time was allowed to trace the statement, however, the statement of the accused could not be traced.

10. This Court has further noticed that in the impugned judgment though it is recorded that the statement of the accused-



appellant under Section 313 CrPC (Section 351 BNSS) was recorded in which the accused has denied the commission of the offence and claimed that he was falsely implicated in the case but there is nothing on the record to show that the attention of the accused-appellant was drawn towards all the incriminating circumstances/materials to the accused during his statement under Section 313 CrPC (Section 351 BNSS). The fact remains that the said statement is not on the record.

11. In the aforementioned background, this Court is of the opinion that in absence of an appropriate consideration of the statement of the accused under Section 313 CrPC, serious prejudice has been caused to the case of the defence. In a catena of decisions, the Hon'ble Supreme Court has pointed out the importance of the statement under Section 313 CrPC. In the case of **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in **(1984) 4 SCC 116**, the Hon'ble Supreme Court has gone to the extent of saying that all such incriminating circumstances, which were not brought to the notice of the accused during his statement under Section 313 CrPC, cannot be relied upon by the prosecution. We quote the relevant paragraph hereunder for ready reference:-

“**143.** Apart from the aforesaid comments there is one vital defect in some of the circumstances mentioned above and relied upon by the High Court



viz. Circumstances 4, 5, 6, 8, 9, 11, 12, 13, 16 and 17. As these circumstances were not put to the appellant in his statement under Section 313 of the Criminal Procedure Code, 1973 they must be completely excluded from consideration because the appellant did not have any chance to explain them. This has been consistently held by this Court as far back as 1953 where in the case of *Hate Singh Bhagat Singh v. State of Madhya Pradesh*¹⁴ this Court held that any circumstance in respect of which an accused was not examined under Section 342 of the Criminal Procedure Code cannot be used against him. Ever since this decision, there is a catena of authorities of this Court uniformly taking the view that unless the circumstance appearing against an accused is put to him in his examination under Section 342 of the old Code (corresponding to Section 313 of the Criminal Procedure Code, 1973), the same cannot be used against him. In *Shamu Balu Chaugule v. State of Maharashtra*¹⁵ this Court held thus: [SCC para 5, p. 440: SCC (Cri) p. 58]

The fact that the appellant was said to be absconding, not having been put to him under Section 342, Criminal Procedure Code, could not be used against him.”

12. We are of the considered opinion that in the present case, it would only be appropriate to set aside the impugned judgment and order and remit the matter to the learned trial court for recording of the statement of the accused-appellant afresh under Section 351 of the BNSS.

13. In result, the impugned judgment and order are set aside.

14. The trial court records be sent down to the learned trial court immediately through a special messenger.

14. AIR 1953 SC 468 : 1953 Cri LJ 1933

15. (1976) 1 SCC 438 : 1976 SCC (Cri) 56



15. The trial court shall record the statement of the accused under Section 351 of the BNSS and thereafter in case, the defence would request to allow them to produce witnesses, appropriate time shall be granted to the defence for the same. In view of the judgment of the Hon'ble Supreme Court in the case of **The Central Bureau of Investigation vs. Mir Usman @ Ara @ Mir Usman Ali** reported in **2025 INSC 1155**, the trial shall continue on day to day basis unless it becomes imperative to adjourn the matter for a cogent reason. It is expected that the trial court shall pass a fresh judgment after following the established procedure of law and hearing within a period of six months from the date of receipt/production of a copy of this judgment.

16. It is clarified that we have not made any observations on the merit of the case keeping in view the fact that the case is being remitted for a fresh consideration after recording of the statement of the accused.

17. This appeal is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

Rishi/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.11.2025
Transmission Date	01.11.2025

