

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.793 of 2021**

Arising Out of PS. Case No.-87 Year-2018 Thana- KAHALGAON District- Bhagalpur

LAXMAN YADAV Son of Late Nathuni Yadav Resident of Village - Janidih
Ghogha, P.s.- Ghogha, Distt.- Bhagalpur.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : M/s Meena Singh,
Bhaskar Shankar, Advocates
For the Respondent/s : Ms Shashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

and

**HONOURABLE JUSTICE SMT. G. ANUPAMA
CHAKRAVARTHY
CAV JUDGMENT**

**(Per: HONOURABLE JUSTICE SMT. GUNNU ANUPAMA
CHAKRAVARTHY)**

Date : 01-12-2023

This appeal has been filed against the judgment of conviction dated 14.09.2021 and order of sentence dated 18.09.2021, passed by Exclusive Special Court (POCSO II)-cum - 7th Addl. District and Sessions Judge, Bhagalpur in POCSO Case No. 671 of 2018 (arising out of Kahalgaon (Ghogha) P.S. Case No. 87 of 2018), wherein the appellant was convicted for the offences punishable under Section 376 I.P.C and Section 5/6 of POCSO Act, which is as under:



Appellant's Name	Convicted under Section	Sentence		
		Imprisonment	Fine(Rs.)	In default of fine.
Laxman Yadav	5/6 of the POCSO Act	R.I. for Life	25,000/-	S.I for 6 months

The trial court did not impose any separate sentence for the offence punishable under Section 376 of I.P.C. in the light of the provision under Section 42 of the POCSO Act.

2. As the matter relates to Section 376 of the Indian Penal Code and section 5/6 of the POCSO Act, we are of the considered view that the names of the victim or the parents of the victim shall not be disclosed in the judgment in order to safeguard the identity of the victim girl as per the directions of the Hon'ble Supreme Court.

3. We have heard Ms. Meena Singh, Learned counsel for the appellant and Learned Additional Public Prosecutor for the State of Bihar.

4. The criminal case was set into motion basing on the written information given by the informant (PW2), who is the mother of the victim, dated 17.02.2018 to the S.H.O., Ghogha Police Station, wherein the informant stated that on 17.02.2018 at around 12.30 noon the daughter of the informant i.e., the victim aged about 10 years went to defecate to the field



and later the victim returned crying stating that one man with mustache, who has fields in Bahiyar came to her, demanded her to cut the grass by threatening and after sometime he asked the victim to sit behind him. Further, he inquired from the victim about the name of her parents, later laid her on the ground by threatening her that he would beat her, if she raise cries and committed wrong acts on her. After coming to know about the facts from the victim, the mother of the victim (PW-2) preferred report to the Police. The written application further disclose that the victim identified the person as that of the appellant and later the written application was made.

5. Basing on the report, the SHO, Ghogha Police Station, Bhagalpur, registered the case against the appellant vide FIR bearing Kahalgaon Ghogha P.S. Case No. 87 of 2018 dated 17.02.2018 for the alleged offences punishable under sections 376(2)(i) of the IPC and under Section 4/6 of the POCSO Act.

6. During the course of investigation, the Investigating Officer recorded the statement of witnesses under Section 161 of the Cr.P.C., got examined the victim under Section 164 of the Cr.P.C. and also referred the victim for medical examination. On completion of the investigation and



after receiving of the documents, laid charge-sheet against the appellant for the offences under Section 376(i) of the IPC and under Section 4/6 of the POCSO Act.

7. The trial court took cognizance against the appellant vide order dated 16.05.2018 for the aforesaid offences and later charges were framed, against the appellant, read over and explained to him. The accused pleaded not guilty and claimed to be tried.

8. In order to prove the case against the appellant beyond the reasonable doubt, the prosecution has examined six witnesses which are as follows:

Rank	Name
PW 1	Victim
PW 2	Mother of the victim (Informant)
PW 3	Pappu Kumar (Jhola Chhap Doctor)
PW 4	Father of the victim
PW 5	Dr. Sushila Choudhary (Doctor)
PW 6	Sanjay Kumar Upadhyay (IO)

9. In addition to the oral evidence of the prosecution's witnesses, the prosecution also brought on record several documentary evidence which are as follows:

<u>S. No.</u>	<u>Exhibit No.</u>	<u>Description</u>
1.	Exhibit -1	Signature of the victim on her statement u/s 164 Cr.P.C.
2.	Exhibit-2	Signature of Pappu Kumar over



		written report
3.	Exhibit-3	Medical report
4.	Exhibit-4	Seizure list of Janghia
5.	Exhibit-5	Seizure list of Half pant
6.	Exhibit-6	Formal FIR
7.	Exhibit-7	Endorsement over written report
8.	Exhibit-8	Requisition to Forensic Science Laboratory

10. P.W. 1 is the victim. It is testified by her that she went to defecate on 17.12.2018 at about 12:00 noon and that the appellant have committed wrongful acts on her. Her evidence further disclose that she intimated the said fact to her mother, who further preferred a written application before the police. She also testified that she underwent medical examination and also made statement to the Magistrate under Section 164 of Cr.P.C. which is Ext. 1. Her statement further disclose that the son of accused threatened her to kill as well as to her parents. The cross-examination of P.W. 1 was closed, as the counsel for the accused could not be present on the said date. Further questionnaire was also recorded by the Court. In the said questionnaire, it is admitted by P.W. 1 that the place of occurrence is an open area and there is no eye witness to the incident. It is also admitted by her that she did not receive any injury but she had only pain, and that she did not have a single scratch on her body.



11. P.W. 2 is the mother of the victim, who reiterated the contents of the written application. In the cross-examination, it is specifically admitted by her that the distance between place of occurrence from the road would be around $\frac{1}{2}$ a kilometer and none witnessed the incident. She denied the suggestions that her husband was engaged as *Bataaidar* and there are disputes between them, for which they have falsely implicated the appellant.

12. P.W. 3 is one Pappu Kumar, who testified that victim came to his house crying and informed about the incident that a man with mustache had done wrongful act on her and on hearing it, they went to the fields, after seeing them the accused fled away towards the garden. Further, they came to know that it was the appellant who had committed the offence, for which they gave written application to the police. In the cross-examination, it is admitted by P.W. 3 that he had not witnessed the incident and came to know it through P.W. 2 and the place of occurrence is visible from the road itself and it is an open place.

13. P.W. 4 is the father of the victim, who testified that P.W. 2 informed about the incident to him on phone and that he came to know that the appellant has committed wrongful act. In the cross-examination, it is specifically admitted by P.W. 4 that



it takes four to five minutes to reach the place of offence from his house and it is an open place. Further wheat crops are being raised in the fields and there was a common road adjacent to the place of occurrence. He further testified that people keep coming and going on the said road, can witness the incident.

14. P.W. 5 is the doctor, who examined the victim girl. Her evidence clearly disclose that there is no evidence of recent sexual intercourse and there is no physical and chemical injuries on the whole body including the private parts. Her evidence also disclose that the vaginal swabs were collected which were sent to pathology lab for detection of spermatozoa. As per the FSL report spermatozoa was not found. In the cross-examination, she specifically admitted that she did not find any sign of rape.

15. P.W. 6 is the Investigating Officer, who recorded the statements of the prosecution witnesses, referred the victim to the medical examination, later collected the medical reports including the FSL report, arrested the accused, produced him before the court for judicial remand and on completion of the investigation laid charge-sheet against the appellant for the aforesaid alleged offence.

16. It is specifically contented by the learned counsel for the appellant that the place of occurrence is a public place



and the alleged incident took place in the midday at about 12:00 noon which is unbelievable. Further, there is a police station nearby and, therefore, the alleged incident did not occur. It is further contented that P.W. 2 is the prominent person of the village, who identified the accused, but the victim herself did not disclose the name of the appellant at any point of time, which is fatal to the case of the prosecution. Further, it is contented by learned counsel for the appellant that the medical evidence do not corroborate with oral evidence in any manner so as to prove the guilt of the accused for the alleged offences punishable under section 376 IPC or under the Special Enactment i.e. POCSO Act and, therefore, prayed to extent benefit of doubt to the appellant and prayed to set aside the conviction and sentence dated 14.09.2021 and 18.09.2021 respectively awarded to the appellant.

17. On the other hand, learned Additional Public Prosecutor contended even in the absence of medical evidence that testimony of the prosecutorix has to be considered and, therefore, prayed to confirm the judgment of the trial court.

18. We have perused the entire record and given thoughtful consideration for the rival submissions of the appellant as well as for the State.



19. On perusal of the entire evidence on record, it is evident that the place of occurrence is an open place and the alleged incident took place at 12:00 in the mid-noon. The evidence of the father of the victim girl clearly discloses there is a road beside the place of occurrence and people move on the said Rasta/road. Admittedly, there are no eye witnesses to the scene of offence. Furthermore, the evidence of P.W. 2 clearly discloses that wheat crop was raised in the scene of offence. The evidence of the doctor clearly discloses that spermatozoa was not found on the swabs which were collected from the vagina of the victim and there is no any sign of rape on the victim. The evidence of doctor further disclose that there were no external or internal injuries found on the victim girl. The medical evidence is not corroborating with the oral evidence of the victim in any manner. The deposition of the victim does not appear to be so truthful and creditworthy that even without corroboration by medical evidence, the charge of commission of rape can be said to be established.

20. In order to establish the offence under Section 376 of the I.P.C., it is for the prosecution to prove guilt of the accused beyond reasonable doubt, which is one of the cardinal principles of criminal justice system and the accused shall be



presumed to be innocent. In a case of sexual assault the medical evidence is more important to prove the guilt of the accused. As stated *supra* the medical evidence is not corroborating with the evidence of the prosecution in any manner to prove the guilt of the accused, and therefore, benefit of doubt has to be extended to the appellant herein. Furthermore, there is no iota of evidence before the Court as to the age of the victim. There is no specific finding of the trial court that the victim was a child as on the date of the occurrence. Prosecution has failed to produce the age determination certificate before the Court. In such circumstances the conviction is liable to be set aside.

21. Accordingly, the appellant's conviction for the offence punishable under Sections 376 I.P.C and Section 5/6 of POCSO Act applying Section 29 thereof also cannot be sustained. The conviction of the appellant for the offences under Sections 376 I.P.C and Section 5/6 of POCSO Act as recorded by the trial court is also not sustainable and the impugned judgment of conviction and order of sentence dated 14.09.2021 and 18.09.2021 respectively deserves to be set aside.

22. Accordingly, the appeal is allowed, setting aside the judgment of conviction dated 14.09.2021 and order of sentence dated 18.09.2021, passed by Exclusive Special Court (POCSO II)-cum - 7th Addl. District and Sessions Judge, Bhagalpur in



POCSO Case No. 671 of 2018 (arising out of Kahalgaon
(Ghogha) P.S. Case No. 87 of 2018).

23. The appellant, namely, Laxman Yadav is in custody
since 18.02.2018. Let him be released forthwith, if not required in
any other matter.

(Gunu Anupama Chakravarthy, J)

Chakradhari Sharan Singh, J: -

(Chakradhari Sharan Singh, J)

amitkr/-

AFR/NAFR	NAFR
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