

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.372 of 2023**

Arising Out of PS. Case No.-108 Year-2019 Thana- MAHARAJGANJ District- Siwan

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Arun Prasad @ Arun Patel, Son of Suresh Prasad, Resident of village-Risaura,
Police Station-Maharajganj, District-Siwan

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ravindra Kumar, Advocate

Mr. Ashok Kumar, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, Addl.P.P.

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE PRAVEEN KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 26-02-2026

Heard learned counsel for the appellant and learned Additional Public Prosecutor for the State. Notice has been served upon the informant, however, the informant has chosen not to enter appearance.

2. The appellant in this case is seeking setting aside of the judgment dated 13.03.2023 (hereinafter referred to as the 'impugned judgment) and the order dated 16.03.2023 (hereinafter referred to as the 'impugned order') passed by the learned Additional Sessions Judge-VI-cum-Special Judge, POCSO Court, Siwan (hereinafter referred to as the 'learned trial court') in



POCSO Trial Case No. 143 of 2019 arising out of Maharajganj P.S. Case No.108 of 2019. By the impugned judgment and order, the learned trial court has been pleased to convict the appellant for the offences punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and ordered him to undergo imprisonment for life and to pay fine of Rs.30,000/- for the offence punishable under Section 4 of the POCSO Act and in default of payment of fine, he shall further undergo simple imprisonment for two years.

Prosecution story

3. The prosecution case is based on the written information of the father of the victim (PW-3) dated 16.04.2019 submitted to the officer in-charge of Maharajganj police station. In his written information (Exhibit-3), the informant alleged that on 15.04.2019 when her daughter (X) aged about 5 years was returning from her school, near Kalisthan his co-villager Arun Prasad (this appellant) aged about 35 years allured her by giving a chocolate and took her in his lap, he took the victim to *Arhar* field and there he opened the pant of the victim and inserted his finger in her private part as a result of which the victim started bleeding. It is stated that when the victim started weeping then the appellant left her, the victim came to her house and disclosed the occurrence



whereafter the father of the victim went to the house of this appellant who told him to do whatever he wanted to do.

4. After investigation of the case, the I.O. submitted Charge-sheet No. 104 of 2019 dated 20.06.2019 against the appellant under Sections 376/511 IPC and Section 4/8 of the POCSO Act. The learned Special Judge, POCSO Act, siwan took cognizance of the offences vide order dated 22.06.2019. Thereafter, the learned trial court framed charges under Sections 376/511 of the IPC as also under Section 4 and 8 of the POCSO Act on 15.10.02019 against the appellant. The charges were explained to the accused person in Hindi who denied the charges and claimed to be tried.

5. On behalf of the prosecution as many as six witnesses have been examined. The complete description of the prosecution witnesses whose oral testimonies have been recorded by the learned trial court and the documentary evidences proved on behalf of the prosecution are provided hereunder in tabular form for ready reference :-

List of prosecution witnesses.

PW-1	Victim 'X'
PW-2	Dr. Mitali Kumari
PW-3	Mother of victim
PW-4	Father of victim
PW-5	Arun Kumar Singh (I.O.)
PW-6	Anupama



List of Exhibits

Exhibit-1	Section 164 Cr. P.C. statement of victim which was signed by the victim and her father
Exhibit-2	Medical examination report of the victim signed by doctor
Exhibit-3	Signature of informant on the Fardbeyan
Exhibit-4	Formal FIR
Exhibit-5	Statement U/S 164 Cr. P.C

6. After recording of the prosecution evidences, statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure (in short 'CrPC') on 19.04.2022. The appellant denied the correctness of the incriminating circumstances upon him and came out with a plea that he has been falsely implicated in this case.

Findings of the learned trial court

7. The learned trial court found that the accused-appellant has not produced any witness, evidence or documentary evidence in his defence but has cross-examined all the witnesses examined by the prosecution in detail.

8. The learned trial court found that in the present case, the witnesses examined in the trial are PW-3, the mother of the victim, PW-4, the father of the victim and PW-1, the victim herself. Thus, all these witnesses are family members-cum-close



relatives. No documentary proof of the victim's age was filed, but her mother (PW-3) stated she was eight and a half years old at the time of the incident. The defence has neither challenged her age nor produced any evidence in this regard. PW-2, Dr. Mitali Kumari, found the victim's age between 12–13 years as per radiological examination, as recorded in Exhibit-2. The FIR (Exhibit-3) also described the victim as a minor.

9. The learned trial court found that the accused-appellant committed penetrative sexual assault on 15.04.2019 at noon in *arhar* field near a temple, as stated in the FIR. The victim (PW-1), in her testimony and in Exhibit 5 (statement under Section 164 CrPC), stated that the accused inserted his finger into her private parts, causing bleeding. Under Sections 29–30 of the POCSO Act, the Court presumes sexual intent, and recorded that such insertion amounts to rape under Section 375 IPC. After analyzing all the evidences available on the record, the learned trial held the appellant's guilty and accordingly convicted him.

Submissions on behalf of the appellant

10. Learned counsel for the appellant has submitted that the statement of the victim is not consistent and it amounts to contradiction. It has also been submitted that the two brothers of the victim have not been examined. Learned counsel for the



appellant sought to raise an issue that the learned trial court has not determined the age of the victim.

11. Learned counsel for the appellant has further submitted that it is a case of false implication and the I.O. (PW-6) in paragraph '3' of his cross-examination has stated that the informant had in his restatement stated that he had prior enmity with the family of the appellant. It is submitted that this is the reason for false implication.

Submissions on behalf of the State

12. The appeal has been opposed by learned Additional Public Prosecutor for the State by submitting that all the prosecution witnesses are consistent in their statements and have fully supported the prosecution case. Learned Addl.P.P. submits that the learned trial court has rightly appreciated the entire evidence on the record and no fault may be found with the same.

Consideration

13. Having heard learned counsel for the appellant and learned Additional Public Prosecutor for the State and on going through the trial court records, this Court finds that the victim (X) in this case as per F.I.R. is a five years old girl who has been subjected to sexual penetrative act after taking her to an agricultural field. The prosecution story, as disclosed in the written



information (Exhibit-4) submitted by the father of the victim (X), would disclose that when the victim was returning from her school on 15.04.2019, near Kalisthan this appellant aged about 35 years allured her by giving a chocolate and took her in his lap, he took the victim to a land and there he opened the pant of the victim and inserted his finger in her private part as a result of which the victim started bleeding. It is stated in the written information that when the victim started weeping then the appellant left her, the victim came to her house and disclosed the occurrence whereafter the father of the victim went to the house of this appellant who told him to do whatever he wanted to do.

14. In course of investigation, police took the victim girl before a learned Magistrate where her statement under Section 164 Cr.P.C. was recorded. The learned Magistrate tested her competence to depose and on being satisfied, he recorded her statement in which she claimed that a boy of her village whose name she did not know but can identify him on seeing stopped her on way and he allured her in the name of a lollipop and asked her to come to rahar field where he opened her pant and then he inserted his finger in her private part. She cried, whereafter her brother reached there. Her 164 Cr.P.C. statement has been brought in evidence wherein she has identified her signature (Exhibit-5).



15. This Court has further noticed that in course of trial, the victim has remained consistent. She has deposed as PW-1. The learned trial court has tested her competence and on being satisfied, her statements have been recorded. The victim has narrated the entire story and this Court finds no material inconsistency much less any contradiction in her statement when compared with the statement made under Section 164 Cr.P.C. She has reiterated that the appellant had inserted his fingers in her private part as a result whereof she had started bleeding, thereafter her father had taken her to the hospital and police had also accompanied them to the hospital. She was treated in the hospital and thereafter she was brought in the court where her statement was recorded. In her examination-in-chief, the victim has stated that she identifies the accused and that the said accused was present in the court. Looking at the appellant, she asserted that this is the person who had inserted his finger in her private part. Thus, the victim has identified the appellant in the court.

16. In the cross-examination, the victim has stated that she does not know the name of the appellant but has stated that his house is in the market at some distance from her house. She has stated that on the date of occurrence, she was coming alone from the school, there was no other child with her, though she has stated



that she used to go with her two brothers and has stated that she was returning with her brothers. This is where learned counsel for the appellant has submitted that the statement of the victim is not consistent and it amounts to contradiction. It has also been submitted that the two brothers of the victim have not been examined. We, however, find that the victim is a child witness and this statement in one of the paragraphs that she was coming from the school with her brothers is not a material discrepancy and it would not amount to any contradiction so as to put her in the category of a wholly unreliable witness. This Court understands that in the society if a person aged about 35 years takes a girl of the village aged about five years in his lap, it is normally taken as a natural conduct done with love and affection but in this case the evidences on the record are showing otherwise as the appellant took the victim to an agricultural field where he opened her pant and inserted his finger into her private part.

17. This Court further finds that the medical examination of the victim was conducted by Dr. Mitali Kumari (PW-2) on 17.04.2019 i.e. on the very next day of the registration of the FIR. In her observations, the doctor has recorded the following injuries on the private part of the victim girl (X). We



extract the injuries reported by the doctor (PW-2) hereunder for a ready reference:-

“1. On 17-04-2019 I was posted at Sadar Hospital, Siwan on post of Medical Officer. On that day by the permission of Deputy Superintendent Dr. M.K. Alam constituted Medical Board In which Myself, Dr. Rita Sinha and Rubina were the members.

2. We examine the victim and found following substances.-

Height- 71cm.

Weight- 20 kg.

Teeth Milk teeth 6+6/6+6-1

Secondary sexual character not developed.

Mark of Identification:-

1. Til present on Right side of Check.

II. Cut mark on Right side of corner up eye.

P/A Soft & natural.

P/V Hymen tear present, Blood present.

Laceration present on left lateral fornices.

Swelling of labia majora & labai minora

Investigation:

Vaginal Swab smear examined under low and high power of microscopic lens.

Finding :-

No spermatozoa seen either dead of alive, Pus cells 2 to 3 HPF. X-ray of both wrist. Non fusion of radial epiphysis.

Pelvic A/P view :-

Non fusion of the illiac creast.



Plain x-ray of both wrist A/P View:-both wrist
Pelvic. non fusion of iliac creast.

On the basis of radiological examination the age
of victim is 12-13 years.

There is evidence of sexual abuse.

This report is in my pen and bear my signature
which is marked as Ext.-02

-----x-----बचाव पक्ष की ओर से -----x-----

2. there was Laceration and blood stain on her
private part.

3. If any girl her self penertrate her private part
by pointed object-hymen may be damaged.

4. No time of examination is mentioned in my
report.

5. I do not recognize victim earlier.

6. victim is not present today.

7. It is wrongly to say that my report is tempted,
vague, imaginary and collusive.”

18. PW-2 has proved the medical examination report
which has been marked Exhibit-2. In her cross-examination, she
has stated that there was laceration and blood stain on her private
part. She denied the suggestion that her report was tempered,
vague, imaginary and collusive. As per radiological examination,
the age of the victim was found between 12-13 years. The victim
had milk teeth 6+6/6+6-1. The medical examination report and the
evidences of the prosecution witnesses with regard to the age of



the victim has never been questioned by the defence in course of cross-examination of the prosecution witnesses.

19. This Court further finds that in this case the other prosecution witnesses are the mother (PW-3), the father (PW-4), the I.O. (PW-5) and one formal witness who has proved the 164 Cr.P.C. statement of the victim which has been marked Exhibit-5. The other prosecution witnesses have supported the prosecution case. The I.O. has given the description of the place of occurrence. He had inspected the place of occurrence, however, it appears that he had not mentioned the time of inspection and had not recorded the statement of the Pujari of the said Kali Mandir. In the opinion of this Court, these shortcomings on the part of the I.O. cannot endure any benefit to the accused.

20. In course of his submissions, learned counsel for the appellant sought to raise an issue that the learned trial court has not determined the age of the victim. This Court called upon him to go through the evidence of the prosecution witnesses and find out from the pattern of the cross-examination of the defence as to whether at any point of time the age of the victim has been questioned or otherwise suggested by the defence. The answer has come in negative. Thus, it is evident that the age of the victim has never been questioned by the defence.



21. Learned counsel for the appellant has further submitted that it is a case of false implication and the I.O. in paragraph '3' of his cross-examination has stated that the informant had in his restatement stated that he had prior enmity with the family of the appellant. This Court finds that when the appellant and his wife came to be examined in course of trial, the defence suggested to these witnesses that some disputes were there with them which these witnesses denied. In his 313 Cr.P.C. statement, the appellant has not stated that there was any prior dispute between the appellant's family and the informant. He has maintained complete silence and only claimed that he is innocent. The appellant did not adduce any evidence in defence to even prima-facie prove that there was any enmity and the reason thereof. We, therefore, do not subscribe this submission of learned counsel for the appellant that it is a case of false implication.

22. In our considered opinion, the learned trial court has not committed any error in appreciation of the evidences available on the record. The presumptions under Section 29 and 30 of the POCSO Act are fully attracted in this case which the appellant is unable to rebut by leading any plausible evidence.

23. In result, we find no reason to interfere with the impugned judgment of conviction.



24. At this stage, learned counsel for the appellant has submitted that Section 4 of the POCSO Act came to be substituted vide Amendment Act 25 of 2019 with effect from 16.08.2019 whereunder the punishment has been enhanced and according to the substituted provision it would not be less than 10 years but which may extend to imprisonment for life. It is submitted that in the present case, the date of occurrence is 15.04.2019 which is much before the date of coming into force of the substituted provision. At the relevant time, Section 4 of the POCSO Act provided for a punishment with imprisonment of either description for a term which shall not be less than 7 years but which may extend to imprisonment for life. It is submitted that the appellant is a married person having children and his entire family is dependent upon him. Considering these facts and there being chances of reformation of the appellant, the sentence of the appellant may be modified appropriately.

25. Learned Addl. P.P. for the State does not dispute that the appellant is a married person having children who are dependent upon him.

26. Having regard to these aspects of the matter, we modify the sentence awarded to the appellant from life imprisonment to a period of ten years under Section 4 of the



POCSO Act, 2012. However, the fine imposed by the learned trial court shall remain the same and in case of his failure to pay the fine, the appellant shall undergo simple imprisonment for one year.

27. With the aforesaid modification in the sentence, this appeal stands disposed of.

(Rajeev Ranjan Prasad, J)

(Praveen Kumar, J)

arvind/-

AFR/NAFR	
CAV DATE	
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