

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2313 of 2022

Arising Out of PS. Case No.-21 Year-2018 Thana- MAHILA P.S. District- Kaimur (Bhabua)

=====

Satish Singh Son of Rajanath Singh R/o Village - Dulhara, P.S.- Chainpur,
District - Kaimur at Bhabua.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Praveen Kumar, Advocate
	:	Mr. Uday Pratap Singh, Advocate
	:	Ms. Anju Kumar Sinha, Advocate
For the Respondent/s	:	Mrs. Anita Kumari Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 22-10-2024

At the outset, on the request of learned counsel for the appellant, the matter is being taken up for final hearing in view of provision available under Section 374(4) of the Code of Criminal Procedure (hereinafter referred to as 'the Code'), which has also not been objected by learned APP for the State.

2. This appeal has been preferred by the appellant/convict under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code')



challenging the judgment of conviction dated 18.05.2022 and order of sentence dated 21.05.2022 passed by learned Additional Sessions Judge, VI cum-Special Judge, POCSO Act, Kaimur at Bhabua in POCSO Case/Registration No. 11 of 2018 (arising out of Mahila Bhabua P.S. Case No. 21 of 2018), whereby the concerned Trial Court has convicted the appellant/convict for the offences punishable under Section 10 of the POCSO (in short Protection of Children from Sexual Offences) Act, where he has been sentenced to undergo rigorous imprisonment for five years alongwith fine of Rs. 5,000/- and in default of payment of fine, further undergo rigorous imprisonment for three months for the aforesaid Section.

3. The case of prosecution in brief is that on 22.03.2018, the five year old daughter of the informant/P.W. 5 X (victim) was playing outside the house, at the time the appellant took informant's daughter to a nearby dilapidated house and removed her under garment and also took off his clothes. Hearing the loud cries of the X, the informant's wife Kranti Devi/P.W. 3 reached to said



dilapidated house and saw that the accused had taken off his clothes and had also removed the under garment of her daughter. When the informant protested that what dirty thing he was doing, the appellant abused the informant and said that he will kill X/victim and when she raised an alarm, appellant ran away. According to the FIR, appellant's attempt to do wrong failed when the informant reached there and he also threatened to kill X/victim.

4. On the basis of aforesaid written information, the police registered a case, as Mahila Bhabua P.S. Case No. 21 of 2018 dated 22.03.2018 for the offence punishable under Sections 354-B, 504 and 506 of the IPC and Section 10 of the POCSO Act, where after the investigation, the police submitted charge-sheet.

5. The learned Special Court, after perusal of record and materials collected during the course of investigation, took cognizance for the offences under Sections 354-B, 504 and 506 of the IPC and Section 10 of the POCSO Act.

6. The learned trial court on the basis of



materials collected during investigation, framed charges against appellant/convict for the offences under Sections 504 & 506 of the IPC & Section 10 of the POCSO Act, which he pleaded “not guilty” and claimed trial.

7. To substantiate its case, the prosecution has examined altogether seven witnesses. They are:-

Prosecution Witnesses No(s).	Names
P.W. 1	Victim X
P.W. 2	Ratandip Soni @ Pankaj
P.W. 3	Kranti Devi (mother of victim)
P.W. 4	Mala Devi
P.W. 5	Rinku Seth (informant & father of victim)
P.W. 6	Chndranath Uraon (I.O.)

8. Apart from the oral evidence, the prosecution has also relied upon following documents/exhibits in order to prove the charges:-

Exhibit No(s).	List of documents
Exhibit-1	Written Application.
Exhibit-2	Signature of informant on his statement as recorded under Section 164 of the Cr.P.C.



9. On the basis of evidence as surfaced during the trial, the learned trial court has examined the appellant/accused under Section 313 of the Code, where he completely denied his involvement by denying the incriminating evidences surfaced during the trial and stated that he was implicated with this case falsely and claimed his complete innocence.

10. Neither any defence witness was examined nor any document in support of defence was brought on record on behalf of appellant/convict.

11. Taking note of the evidence as surfaced during the trial and the arguments as advanced by the parties, the learned Trial Court has convicted appellant/convict for the offences under Section 10 of the POCSO Act and sentenced him in the manner as stated above.

12. Being aggrieved with the aforesaid judgment of conviction and order of sentence, the appellant/convict has preferred the present appeal.

13. Hence, the present appeal.

Argument on behalf of the appellant/convict:



14. Mr. Praveen Kumar, learned counsel appearing for the appellant/convict submitted that from the deposition of prosecution witnesses, it is apparent that the appellant was implicated with the present case falsely due to dispute of Rs. 25,000/-. It is pointed out that due to said dispute informant in collusion with his wife/P.W. 3 implicated appellant falsely by making their daughter instrumental, who was aged about 4-5 years at the time of occurrence. It is submitted that FIR in issue was lodged after the delay of 5 days of the occurrence when a financial dispute not appears settled between the parties after series of *panchayati*. It is submitted further that informant, who is father of the victim is hear-say witness of the occurrence and as per FIR he received information regarding crime in question from his wife/P.W. 3, whereas as per his statement as recorded under Section 164 of the Cr.P.C., he said to received information from P.W. 1/victim herself, which can be taken as major contradiction.

15. It is further submitted by learned counsel that the statement of victim/P.W. 1 was not recorded under



Section 164 of the Cr.P.C. It is also pointed out that no precautionary questions were asked to victim during trial, so as to ascertain her understanding regarding crime in question as she was about five years old and therefore tutoring of victim cannot be ruled out. It is submitted that deposition of victim on oath appears contradictory to legal ratio as settled through **Pradeep Vs. State of Haryana**, as reported in **[2023 SCC Online SC 777]**. Learned counsel further submitted that victim was not examined medically and no effort was made even on the part of I.O. in this regard. The statement of victim under Section 161 of the Cr.P.C. also not appears recorded during the course of investigation as per deposition of I.O.

16. While concluding the argument it is also pointed out by learned counsel that the fact of this case negate on its face to have any sexual intent so as to constitute offence under Sections 7 & 9 of the POCSO Act. It is submitted that having such evidence in hand the balance of appeal is in favour of appellant and mere on the basis of presumption as available under Sections 29 & 30 of



the POCSO Act, conviction cannot be recorded particularly, when prosecution failed to establish foundational aspect of crime in question. Accordingly the judgment of conviction is liable to be quashed/set aside.

Argument on behalf of State:

17. Mrs. Anita Kumari Singh, learned APP appearing on behalf of respondent-State, while opposing the appeal submitted that victim/P.W. 1 categorically deposed that appellant put off his pant and her under garment also and touched her between legs. It is submitted that she was about five years of age at the time of occurrence and said fact was not disputed. It is submitted by learned APP that the victim was child within the meaning of Section 94 (1) of the Juvenile Justice Act 2015 and moreover this fact was never disputed during the trial. However, it is fairly conceded that informant/P.W. 5 appears to be a hear-say witness of the occurrence and statement of victim could not be recorded under Section 164 of the Cr.P.C.

18. I have perused the trial court records carefully and gone through the evidences available on record



and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

19. As to re-appreciate the evidences, while disposing the present appeal, it would be apposite to discuss the evidences available on record, which are as under:-

20. The most important witness of the present occurrence is victim herself, who was examined as P.W. 1 during the course of trial. It appears from the deposition that no precautionary question was asked to her, as to ascertain her understanding *qua* crime in question, when she appeared in dock to depose. It appears from her deposition that appellant took her to nearby dilapidated house and put off her under garment and also his pant and thereafter touched her between legs upon which she raised an alarm/cried where after her mother (P.W. 3) came to the place of occurrence and thereafter appellant fled away. It appears from her deposition that appellant is her neighbour.

20.1. Upon cross-examination, it was deposed by her that her mother/P.W. 3 saw appellant at the gate of her house and at that time her mother was only available.



She also went to police station alongwith her mother/P.W.3.

21. P.W. 2 Ratandip Soni @ Pankaj, uncle of the victim. It was deposed by him that occurrence took place on 18.03.2018. He also supported the occurrence and deposed that when he heard cry of victim/P.W. 1, he went towards the place of occurrence and found appellant fleeing away and when he asked victim/P.W. 1, she narrated about the occurrence, his statement was recorded by police during the course of investigation. He also visited police station alongwith P.W.3/mother of the victim.

22. P.W. 3 Kranti Devi, mother of victim/P.W. 1. It was deposed by her that occurrence took place before 14-15 months at about 12 PM. It was deposed by her that when she came outside her house, she saw that pant of appellant was open, he also opened under garments of her daughter, she raised alarm and on her alarm Mala Devi/P.W. 4, Pankaj Seth (not examined) and Rinku Seth/informant/P.W. 5 came over there. Appellant fled to his home. Her statement was also recorded during the course of investigation.



22.1. Upon cross-examination, it was stated that she came outside her home on alarm and found that her father had a hot exchange of words with 8-10 other persons, where after she called her father inside and those persons went away. It was deposed that her father is running jewellery shop. She also stated to know that father of appellant, advanced a loan of Rs. 25,000/- to her father. It was stated that out of said loan, some dispute surfaced between their families. It was also stated that for said money 2-3 *panchayati* was held and thereafter the present case was lodged. However, she denied the suggestion as advanced by learned counsel for the appellant that present false case was lodged out of said money dispute.

23. **P.W. 4 is Mala Devi**, who at the time of occurrence was washing clothes and on alarm she came outside and found appellant running away near to victim/P.W. 1, she deposed that she came to know about the occurrence from P.W. 3.

23.1. Upon cross-examination, it appears from her statement that she also visited police station alongwith



P.W. 3.

24. **P.W. 5 Rinku Seth, father of victim/P.W. 1, informant** of this case and husband of P.W. 3. It appears from his deposition that he came to know about the occurrence from victim/P.W. 1, herself. It also appears from his deposition that after the said information his wife/P.W. 3 went with his daughter/P.W. 1 to the place of occurrence and thereafter found both her daughter and appellant in naked condition, whereafter they went to police station to lodge the present case. He identified his signature on written information, which upon his identification was exhibited as Exhibit-1. He also identified his signature on his statement as recorded under Section 164 of the Cr.P.C., which upon his identification was exhibited as Exhibit-2.

24.1. Upon cross-examination, it was stated by him that he met her daughter firstly in the courtyard. She was naked at that time. It was categorically stated by him that she came to know about the occurrence as he was informed by P.W. 3 & P.W. 1.

25. **P.W. 6 Chandranath Uraon**, who is the



Investigating Officer of this case and deposed that present case lodged as Mahila P.S. Case No. 21 of 2018 by SHO Anchala Kumari and was transferred to him for investigation. He visited the place of occurrence during the course of investigation and recorded the statement of witnesses who supported the occurrence. He got recorded the statement of informant/P.W. 5 under Section 164 of the Cr.P.C. and finding this case true submitted charge-sheet under Sections 354-B, 504 and 506 of the IPC and under Section 10 of the POCSO Act against appellant/accused.

25.1. Upon cross-examination, it was stated that he never enquired about the victim. It was stated that informant/P.W. 5 refused to give consent for medical examination of victim/P.W. 1.

Conclusion

26. Upon perusal of record it appears that understanding of victim/P.W. 1 was not ascertained by learned trial court before entering her in oath as to understand the nature of crime by putting preliminary questions as to ascertain the correctness of her testimony.



27. In this context it, would be apposite to reproduce the para nos. 7, 8, 9 and 10 of the **Pradeep Case (supra)**, in aforesaid context which reads as under:-

7. We have carefully considered the submissions. The fate of the case depends on the testimony of the minor witness Ajay (PW-1). Under Section 118 of the Evidence Act, 1872 (for short, "the Evidence Act"), a child witness is competent to depose unless the Court considers that he is prevented from understanding the questions put to him, or from giving rational answers by the reason of his tender age. As regards the administration of oath to a child witness, Section 4 of the Oaths Act, 1969 (for short "Oaths Act") is relevant. Section 4 reads thus:

"4. Oaths or affirmations to be made by witnesses, interpreters and jurors.—(1) Oaths or affirmations shall be made by the following persons, namely:—

(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any court or person having by law or consent of parties authority to examine such persons or to receive evidence;

(b) interpreters of questions put to, and evidence given by, witnesses; and

(c) jurors:

Provided that where the witness is a child under twelve years of age, and the court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking



the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of Section 5 shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.

(2)”

8. Under the proviso to sub-Section (1) of Section 4, it is laid down that in case of a child witness under 12 years of age, unless satisfaction as required by the said proviso is recorded, an oath cannot be administered to the child witness. In this case, in the deposition of PW-1 Ajay, it is mentioned that his age was 12 years at the time of the recording of evidence. Therefore, the proviso to Section 4 of the Oaths Act will not apply in this case. However, in view of the requirement of Section 118 of the Evidence Act, the learned Trial Judge was under a duty to record his opinion that the child is able to understand the questions put to him and that he is able to give rational answers to the questions put to him. The Trial Judge must also record his opinion that the child witness understands the duty of speaking the truth and state why he is of the opinion that the child understands the duty of speaking the truth.

9. It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must



apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care and caution.

10. Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court.

28. It further appears from the deposition of victim/P.W. 1 that appellant put her under garments off to make her naked and also touched between her legs and also opened his pants. She raised alarm, whereafter P.W. 3 came to the place of occurrence. P.W. 3 stated that on hearing the cry Mala Devi/P.W. 4, Pankaj Seth (not examined) and Rinku Seth/P.W. 5 came over there. These two statements



appears contradictory to each other. Victim/P.W. 1 deposed in her examination-in-chief that appellant met with her mother at the gate of her house, making entire deposition of P.W. 3 as discussed above, doubtful.

29. If the version of P.W. 2 be taken into consideration, it appears that he was informed by P.W. 3/mother that he find appellant fleeing away near to victim, which also appears contradictory to the version of P.W. 3.

30. P.W. 3 is the mother of the victim, who categorically stated that there was dispute regarding Rs. 25,000/- between father of the appellant and her father and on the date of occurrence, some hot exchange of words took place between them outside her house for which 2-3 *panchayati* took place and when matter was not settled, present case was lodged. The genesis of occurrence is doubtful in view of depositions of P.W. 3 and thus false implication cannot be ruled out, straightaway. P.W. 4 is hear-say witness and her testimony not appears so relevant *qua* crime in question.

31. P.W. 5/Rinku Seth, who is the informant and



father of the victim as per his deposition, it appears that he came to know regarding occurrence by victim herself and thereafter her victim daughter and wife went to the place of occurrence and found victim and appellant in naked condition. Deposition of P.W. 5 is of such contradictory in nature, which makes entire allegation false on its face.

32. Besides above the statement of victim was also not recorded under Section 164 of the Cr.P.C. and she was also not examined medically.

33. In view of aforesaid discussed evidence it can be safely said that prosecution failed to established foundational aspect *qua* alleged sexual assault so as to import presumption as available under Section 29 & 30 of the POCSO Act.

34. Accordingly, the appeal stands allowed.

35. The impugned judgment of conviction dated 18.05.2022 and order of sentence dated 21.05.2022 passed by learned Additional Sessions Judge VI-cum-Special Judge POCSO Act, Kaimur at Bhabua in POCSO Case/Registration No. 11 of 2018 (arising out of Mahila Bhabua P.S. Case No.



21 of 2018) is, hereby, set aside.

36. Accordingly, appellant namely Satish Singh is acquitted from the charges levelled against him.

37. If the appellant is in custody in connection with this case, he is directed to be released forthwith, if not required in any other case. Fine, in any paid, by appellant, be returned to him immediately.

38. Office is directed to send back the trial court records along with a copy of the judgment to the court below forthwith.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.10.2024
Transmission Date	24.10.2024

