

Criminal Appeal (D.B.) No. 1048 of 2015

[Arising out of judgment of conviction dated 25.07.2015 and order of sentence dated 29.07.2015 passed by learned Additional Sessions Judge cum Special Judge (POCSO), Simdega in Special (POCSO) Case No. 21 of 2014]

Anukaran Kandulna son of Enem Kandulna, resident of Village Kereya Pahan Toli, P.O. Thethaitangar, P.S. Thethaitangar, District Simdega

.... **Appellant**

--Versus--

The State of Jharkhand **Respondent**

For the Appellant : Mr. Indrajit Sinha, Advocate
Mr. Akhouri Avinash Kumar, Advocate
Ms. Ashwini Priya, Advocate
For the State : Mr. Sanjay Kumar Srivastava, A.P.P.

PRESENT: SRI ANANDA SEN, J.

SRI GAUTAM KUMAR CHOUDHARY, J.

JUDGMENT

Reserved on: 22.08.2024

Pronounced On: .08.2024

Per Gautam Kumar Choudhary, J. This appeal is preferred against judgment of conviction and sentence passed in Special (POCSO) Case No.21/2014, whereby and where under the appellant has been convicted and sentenced under Section 376 of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter 'POCSO Act').

2. As per the FIR which was lodged on 25.06.2014 by the victim girl aged 13 years, on 07.06.2014 in the evening at 6.30 she was washing clothes in the hand pump at the Aanganbari Centre in the village. Appellant in the meantime came there and committed rape by gagging her mouth with cloth. He also extended life threat to her for not disclosing the matter to anyone. She returned home and informed her family members about the incidence. Due to the threat, the case was not lodged immediately after incidence.

3. On the basis of the written report, T. Tanger P.S. Case No.27/14 was registered under Section 376 of the IPC and under Section 5(J)(11) of the POCSO Act against the appellant. Police on investigation found the case true and submitted charge sheet against the appellant. After cognizance and commitment, appellant was put on trial for the offence under Section 376 of the IPC and Section 4 of the POCSO Act.

4. Altogether nine witnesses were examined on behalf of the prosecution and relevant documents including statement under Section 164 of the Cr.P.C., Medico Legal Examination report have been adduced into evidence and marked as Exhibit 1 – 8.

5. The statement of the accused was recorded under Section 313 of the Cr.P.C. Defence is of innocence, but no specific defence has been pleaded.

6. Judgment of conviction and sentence has been assailed on the ground that there is an inordinate delay of 18 days in lodging the FIR, for which no plausible explanation has been given by the informant. Although it has been deposed by the witnesses that a Panchayat was held after the incidence in the village, but the FIR does not refer to any such Panchayat and is completely silent about it.

7. It is argued that the case had been lodged to extort money which shall be evident from the testimony of the mother of the victim (P.W. 2) wherein she has deposed that Rs.1,00,000/- was demanded from the accused/appellant and when the demand was not met, the case was lodged. It is further argued that as per the FIR as well as in the statement under Section 164 of the Cr.P.C. of the prosecutrix (P.W. 6) at the time of incidence, she was all alone at the place of occurrence, whereas P.W. 2 has deposed that when she went in search of her daughter in the said evening, she found that her daughter was naked and the appellant was lying over her. At this, she chased away the accused with sleeper in her hand, and took her daughter back after dressing her to home.

8. Learned A.P.P. has defended the judgment of conviction and sentence. It is submitted that law is settled in sexual assault cases, uncorroborated testimony of the victim girl is sufficient to pass a judgment of conviction. Further, there is a presumption against a person prosecuted for committing an offence under Sections 3, 5, 7 and 9 of the POCSO Act that the person has committed the offence, unless the contrary is proved. The delay in lodging the FIR has been explained as there was a threat extended by the appellant to the informant party and also the matter had been taken up in the village Panchayat.

9. At the outset, it need to be noted that the Evidence Act is a pragmatic document and proof a fact depends upon the facts and circumstance of each case. Section 134 of the Evidence Act does not mandate any specific number of witnesses required to prove any fact and one cogent, reliable and trustworthy witness is sufficient for proof. Sexual assaults are not committed in public, and

therefore, to look for corroboration in all cases will be an unrealistic pursuit. Unless there is something egregiously unusual in the testimony of a victim it cannot be discarded even if it is not corroborated by any medical evidence. However, courts need to be on guard against any false implication of the accused.

10. In the present case, at the outset, learned trial court fell in error in sentencing the appellant both under Section 376 of the IPC and Section 4 of the POCSO Act which was impermissible in view of Section 42 of the POCSO Act. On sentence being inflicted under Section 4 of the POCSO Act, sentence under Section 376 was uncalled for.

11. Coming to the merit of the case, I find that the prosecution case is riddled with infirmities which raises serious doubt on the veracity of witnesses. To begin with there is a delay of 18 days in lodging the FIR which has not been sufficiently explained.

12. The place of occurrence is situated in the village near the Aanganbari Centre where the victim had gone to wash her cloth. As per the evidence of prosecutrix (P.W. 6), she was all alone when rape was committed with her. In the FIR, or in the statement under Section 164 of the Cr.P.C, there is no mention that the mother (P.W. 2) had arrived at the place of occurrence in the nick of time when the appellant had pinned down the victim after getting her undressed. PW-2 further states that when she arrived and chased him with her sleeper, he fled away in a naked condition. Thereafter, she got her daughter dressed up and took her back. Victim has admitted in her cross examination that her mother had come to the place of occurrence. Evidence of the victim and that of her mother are incompatible.

13. Doctor (P.W. 3), who examined the victim girl has specifically stated that she did not find any injury external or internal. The hymen was intact and the Doctor has opined that there was no penetration at the time of occurrence. In order to prove the charge under Section 4 of the POCSO Act, there should be penetrative sexual assault. In the absence of proof of penetrative sexual assault charge will not be proved.

14. Thus three versions are coming up. First is, as stated in the FIR and under Section 164 of the Cr.PC, that the victim was ravished under threat by the appellant and no one was present there. In her statement under Section

164 of the Cr.P.C. (Exhibit 3), she has specifically stated when she returned home then she disclosed about the incidence to her mother. Second is, as stated by mother of the victim (P.W. 2) that when she went there, she found both of them in a compromising position and she chased away the appellant from there, who took to his heel in a naked condition. Third is, the deposition of victim (P.W. 6) that rape was committed with her by the appellant when she was alone in the Aanganbari Kendra for washing cloth. These contradictions coupled with non-corroboration by medical evidence and delay in lodging the FIR by about 18 days renders the prosecution case doubtful. I am of the view that the appellant is entitled to benefit of doubt.

Judgment of conviction and sentence is accordingly set aside.

Appeal is allowed.

Pending Interlocutory Application, if any, is disposed of.

(Gautam Kumar Choudhary, J.)

Per Ananda Sen, J. I agree.

(Ananda Sen, J.)

High Court of Jharkhand, Ranchi

Dated, 28th August, 2024

AFR/Anit