

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.383 of 2023

Arising Out of PS. Case No.-20 Year-2015 Thana- MAHILA PS District- Katihar

Ratan Mahto, Son of Late Heera Lal Mahto, R/V/ Mohalla- Mirchaibari, PS-
Katihar Sahayak, Dist- Katihar

... .. Appellant

Versus

1. The State of Bihar
2. Mother of Victim 'X', C/o Wasim Bhasker Resident of Village- Jhaljhaliya
Ps- English Bazar, Dist- Maldah (West Bengal) At Present Village- Gaushala
(Near Politechnic College), Ps- Muffasil Dist- katihar

... .. Respondents

Appearance :

For the Appellant	:	Ms. Shilpi Keshari, Amicus Curiae Ms. Priya Kumari, Advocate
For the State	:	Mr. Ajay Mishra, Advocate
For the Respondent No.2:	:	Mr. Balram Kapri, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 10-08-2026

Heard learned counsel for the appellant, learned counsel for the informant and learned Additional Public Prosecutor for the State. We appreciate that learned Amicus Curiae has rendered her services pro-bono.

2. This appeal has been preferred for setting aside the judgment of conviction dated 15.02.2023 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 21.02.2023 (hereinafter referred to as the 'impugned order')



passed by learned Additional Sessions Judge-VI-cum-Exclusive Special Judge, POCSO, Civil Court, Katihar (hereinafter referred to as the 'learned trial court') in G.R. No. 902 of 2015 arising out of Mahila P.S. Case No. 20 of 2015.

3. By the impugned judgment, the appellant has been convicted for the offences punishable under Section 4 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act') and vide impugned order dated 21.02.2023, he has been sentenced to undergo twenty years rigorous imprisonment with a fine of Rs.25,000/- and in default of payment of fine, he has to further undergo additional imprisonment for three months.

Prosecution Case

4. The prosecution case is based on the written application of the informant (PW-6). In her written information, she has disclosed that she happened to be the resident of a place falling within the English Bazar police station in the district of Malda. Her daughter who is the victim of this case (X) aged about 11 years was living in the house of her maternal grandfather-grandmother near the Polytechnic College in village-Goshala, she was carrying her studies from there. It is alleged that one of the neighbours of the maternal grandfather of the victim (X) is this appellant who entered into the house of the informant on



09.04.2015 in the morning at 7 O' Clock and committed rape on the minor daughter of the informant. She claimed that at that time her daughter was alone in the house of the father of the informant and taking advantage of her being alone in the house the accused-appellant had taken the opportunity and while leaving the appellant threatened the victim that if she would disclose the occurrence to anyone then she would be killed.

5. On the basis of this written application, FIR being Mahila P.S. Case No. 20 of 2015 dated 10.04.2015 was registered under Section 376/506 of the Indian Penal Code (in short 'IPC') against Ratan Mahto. After investigation, police submitted chargesheet bearing Chargesheet No. 41 of 2015 dated 31.05.2015 under Sections 376 and 506 IPC and Sections 4 of the POCSO Act against the appellant Ratan Mahto. Learned trial court vide order dated 29.10.2015 took cognizance of the offences punishable under above-mentioned Sections and found a *prima-facie* case against the appellant Ratan Mahto.

6. Charges were read over in Hindi and explained to the appellant which he denied and claimed to be tried, accordingly, vide order dated 23.01.2016, charges were framed under Sections 376 and 506 IPC and Section 4 of the POCSO Act against the appellant Ratan Mahto.



7. In course of trial, the prosecution has examined altogether seven witnesses and exhibited several documentary evidences. The description of the prosecution witnesses and the exhibits are given hereunder in tabular form:-

List of Prosecution Witnesses

Prosecution Witness No.	Name of Witness	Description of the Witness
PW-1	Dr. Kanak Ranjan	Medical Officer
PW-2	Ram Prakash Chourasia	I.O.
PW-3	Chanchal Kumar Shrivastav	Hearsay witness
PW-4	Rubikant Kachhap	I.O.
PW-5	Maternal Grandmother of the victim	Related witness
PW-6	Mother of the victim	Informant
PW-7	Victim 'X'	Victim

List of Exhibits on behalf of Prosecution

Exhibit No.	Description of the Exhibit	Proved by/ Attested by
Exhibit ‘1’	Medical report	PW-1
Exhibit ‘2’	Signature of SHO on Formal FIR	PW-4
Exhibit ‘3’	Pagination Note	PW-4

8. Thereafter, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure (in short ‘CrPC’) in which he denied the allegation.

Findings of the learned trial court

9. The learned trial court, after having gone through the materials available on the record came to the conclusion that in this case the victim was neither produced before the Child Welfare



Committee nor the I.O. collected her age proof from the school. But on the basis of the Medical Examination Report (Exhibit '1') and the statement of the mother of the victim, the learned trial court concluded her age about 11 years.

10. Learned trial court, while considering the truthfulness of the allegations, found that no evidence is available on the record to show that anyone was present at the place of occurrence at the time when the rape was committed on the victim except the accused and the victim. Learned trial court found from the oral evidences available on the record that the witnesses who deposed regarding commission of alleged occurrence are the hearsay witnesses as disclosed by the victim to them at the same time the learned trial court found that the victim herself denied the factum of commission of rape by the accused but learned trial court observed that considering the age of the victim as 11 years at the time of occurrence the victim along with her family member has compromised with accused and there is less possibility that the victim will disclose the truth before the court in evidence.

11. The learned trial court has gone through the medical evidences available on the record in which redness in right side of labia minora was found and learned trial court took note of the evidence of the doctor in which it was opined that there is an



attempted sexual intercourse. Accordingly, learned trial court believed that the offence of rape and penetrative sexual assault against the victim had happened but victim was denying it at the time of evidence for the sake of compromise which in itself has no legal status in offences relating to POCSO Act.

12. Learned trial court after considering the age of the victim, medical evidence and the evidences came through the witnesses in the form of mother, grandmother and an independent witness who asserted that something like rape had happened with victim committed by the present accused believed the commission of penetration on the victim by the accused. Learned trial court presumed that the accused had sufficient knowledge and intention behind committing the offence on the basis of presumption under Section 30 of the Act itself, accordingly, held the accused guilty under the provisions of POCSO Act.

13. While considering the charge under Section 376 IPC, learned trial court held that so far as penetration of vagina of the victim is concerned, it is already an established fact in preceding paragraphs. But the said act of penetration of vagina was committed by present accused is not established by the prosecution with the help of evidences on record. Further, there is nothing on record which will disclose the fact that the accused had



intention to do the same. The charges under Sections 376 and 506 IPC were taken as not proved. Learned trial court, however, found the accused-appellant guilty under Section 4 of the POCSO Act and sentenced him accordingly.

Submissions on behalf of the appellant

14. Learned counsel for the appellant while assailing the impugned judgment and order of the learned trial court submits that the learned trial court has committed grave error in convicting the appellant.

15. Learned counsel for the appellant has submitted that the victim herself has turned hostile. She denied any occurrence with her. Her testimony falsifies the entire prosecution case. Learned counsel has further submitted that the prosecution has failed to prove the case beyond reasonable doubts.

16. Learned counsel has further argued that neither the informant nor the victim has supported the case in their respective depositions, it is evident that they had concocted this case to falsely implicate the appellant. Learned counsel for the appellant has also submitted that in the medical report, it is not conclusive that assault took place, no spermatozoa were found and no mark of injury was present on the body of the accused. The medical



report again shows that the case is false and that no sexual assault took place.

17. Learned counsel has also submitted that when the mother and the victim both have turned hostile and the medical evidence is not conclusive, the learned trial court has erred in convicting the appellant.

Submissions on behalf of the Respondents

18. Learned Additional Public Prosecutor for the State and learned counsel for the informant have opposed the appeal by submitting that the testimonies of the victim and other witnesses are consistent throughout the trial. There are no material contradictions or discrepancies affecting the core of the prosecution case. Learned Additional Prosecutor for the State submits that the medical examination report of the victim corroborates the prosecution case. Therefore, the learned trial court has rightly convicted the appellant by carefully considering the evidence available on the record.

Consideration

19. We have heard learned counsel for the appellant, learned Additional Public Prosecutor for the State and learned counsel for the informant-respondent no.2 as also perused the learned trial court records.



20. The present case arises out of a written information dated 10.04.2015 filed by the mother of the victim girl. She has been examined as PW-6 in this case. In her written information, she has disclosed that she happened to be the resident of a place falling within the English Bazar police station in the district of Malda. Her daughter who is the victim of this case (X) aged about 11 years was living in the house of her maternal grandfather-grandmother near the Polytechnic College in village-Goshala, she was carrying her studies from there. It is alleged that one of the neighbours of the maternal grandfather of the victim (X) is this appellant who entered into the house of the informant on 09.04.2015 in the morning at 7 O' Clock and committed rape on the minor daughter of the informant. She claimed that at that time her daughter was alone in the house of the father of the informant and taking advantage of her being alone in the house the accused-appellant had taken the opportunity and while leaving the appellant threatened the victim that if she would disclose the occurrence to anyone then she would be killed.

21. It is evident that the occurrence is said to have taken place on 09.04.2015 at 7.00 AM, however, the written information was submitted on 10.04.2015 at 20.00 Hrs (8.00 PM) which reached the court of the learned jurisdictional Magistrate on



11.04.2015. The case was registered under Sections 376/506 IPC and Section 4 of the POCSO Act.

22. After investigation, police submitted a charge-sheet in which four witnesses were named, they were (i) mother of the victim (ii) Maternal grandmother of the victim (PW-5) (iii) Rubi Kant Kachhap, the then S.H.O. of Khusbandpur, Begusarai and (iv) S.I. Ram Prakash Chaurasia (I.O.). However, in course of trial, the prosecution examined 7 witnesses. The most important witness is the victim (PW-7) who was not a chargesheet witness. In her examination-in-chief, she has stated that her mother lodged a case against the appellant. In paragraph '4' of her examination-in-chief, she has stated that no occurrence had taken place with her. In paragraph '5', she has stated that her mother had not told her as to why she had lodged the case. In paragraph '6', she has stated that police had come to her but she had not stated anything. The victim has been declared hostile and the prosecution cross-examined her. Her attention was drawn towards her previous statement said to have been made before police that the appellant had committed rape on her which this witness denied. This witness further denied the suggestion of the prosecution that she had falsely deposed in collusion with the appellant. In her further cross-examination, she



has stated that she and her mother had willfully compromised the matter. This witness seems to be illiterate.

23. The I.O. of this case has been examined as PW-4. She is the first I.O. who was posted as S.H.O. in the Mahila police station on 10.04.2015. She has registered the case and taken charge of the investigation. She has proved her signature on the formal FIR which has been marked Exhibit-4. She has also proved the endorsement made in her name as Exhibit-3. In course of investigation, she had inspected the place of occurrence and had recorded the statement of the victim and her mother. In her examination-in-chief, the I.O. has not made any statement that during investigation the victim had supported the prosecution case. Nothing is stated about what was stated by the victim and her mother in course of investigation. In paragraph '3' of her deposition, PW-4 has stated that, in course of investigation, she had gone to the house of the victim but she had not gone to the house of the accused. She has stated that the statement of the mother of the victim girl and the victim were recorded on 10.04.2015 during night hour and at that time there were many people but nobody else's statement was recorded.

24. This Court finds that while the prosecution sought to cross-examine PW-7 by suggesting her that before police she had



stated that the appellant had committed rape on her but when the I.O. (PW-4) came to be examined, the prosecution did not prove the statement of the victim made before the I.O. There is no whisper in the statement of the I.O. that the victim or her mother had supported the prosecution case.

25. This Court further finds that the Dr. Kanak Ranjan (PW-1) had examined the victim on 11.04.2015 at 10.00 AM. She has deposed about the age of the victim based on radiological report given by Dr. D.N. Poddar. According to her opinion, the victim was aged between 10 to 11 years. In this case, the trial court has held that the I.O. had not produced the victim before the Child Welfare Committee or the Juvenile Justice Board for assessment of her age. The I.O. had not collected any evidence of her age and the only evidence with regard to the age of the victim is the deposition of the doctor (PW-1) who has stated about the opinion based on the radiological report. The doctor has opined that there was no mark of injury present on her body. There was redness on right side of labia minora. Hymen was intact. Vaginal swab report was given to Pathologist for microscopic examination but no spermatozoa was found. From the given findings, the doctor opined that attempt of sexual intercourse might have been done. She has proved the report signed by her as Exhibit-1. In her cross-



examination, the doctor opined that "might have been done means may or may not be done".

26. In the opinion of this Court, the medical opinion as expressed by the doctor (PW-1) leads nowhere and it cannot be said to be a conclusive proof of the fact as alleged by the prosecution. This has to be held keeping in mind the fact that the victim PW-7 has not supported the prosecution case. In fact, her deposition goes to show that her mother was instrumental behind the lodgment of the case as the victim had not even made any such statement before police. The fact that the informant entered into a compromise will go against her.

27. PW-3 Chanchal Kumar Srivastava is the neighbour who is a hearsay witness and he has stated that there was a hulla in the mohalla that something has happened with the daughter of the informant and the appellant had committed rape on her. In his cross-examination, he has stated that he was not present that day and he had come to know it after the case was lodged. He has not seen anything.

28. The another prosecution witness is the maternal grandmother of the victim who has been examined as PW-5. She has stated that a wrong act was committed with her niece (natini) and her daughter had lodged the case against the appellant. In her



examination-in-chief, she has stated that her Natini is slow by her mind. She did not remember that how many years ago her daughter was married. She has stated that her daughter (victim's mother) was residing in Malda. She has further stated in her cross-examination that on the date of occurrence she had left her house at 10.00 AM and returned to the house at 4.00 in the evening. On the next day, her daughter came at 10.00 AM from Malda. Her Natini had told her about the occurrence and people from the village had assembled. This witness is also an illiterate witness as she has put her thumb impression. It is evident from her testimony that she left her house at 10:00 AM, therefore, at the time of occurrence (07:00 AM), the victim was not alone.

29. The mother of the victim, who is the informant of this case, has been examined as PW-6. In her examination-in-chief, she has stated that she came to know that the appellant had committed rape on her daughter then she came to Katihar and lodged the case in the police station. She had put her thumb impression on the written information submitted in the police station. In paragraph '6', she has stated that she was informed by the neighbours over telephone. In her cross-examination, this witness has stated that she had compromised the case on her own volition. She had not seen the occurrence of rape and she has stated that she had lodged



the case at the instance of people. She did not remember that who had given her a telephone call. In paragraph '12', she has further stated that she came to know that the appellant had not committed any wrong act with her daughter, therefore, she entered into a settlement. In paragraph '13', she has stated that she did not know what Darogaji had written in the application. This witness is also an illiterate witness as she had put her thumb impression. Who wrote the written information is not disclosed. The written information has not been exhibited and the contents thereof are not proved. PW-5 has stated that her daughter (PW-6) came at 10:00 AM from Malda but the FIR has been lodged at 08:00 PM. Moreover, PW-6 does not say that she was informed about the occurrence by her mother, father or the victim. The concoction in prosecution story is apparent on the face of it. No other witness from the village has been examined. It is evident on a close analysis of the testimonies of the prosecution witnesses that they are not at all reliable witnesses on whose testimonies a conviction may be safely recorded against the accused-appellant.

30. While this Court is aware of the presumptions under Sections 29 and 30 of the POCSO Act, the Court is also reminded of the presumption of innocence which is not lost in cases under the POCSO Act. In the case of **Ramanand vs. State of U.P.**



reported in **AIR 2022 (SC) 5273**, the Hon'ble Supreme Court has taken note of the principles of presumption of innocence. The relevant paragraph nos. '99' and '101' from the judgment of the Hon'ble Supreme Court is being reproduced hereunder for a ready reference:-

“**99.** It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. In American Jurisprudence, 2nd Edn., Vol. 30, the expression “preponderance of evidence” has been defined in Article 1164. In America the term means “the weight, credit and value of the aggregate evidence on either side, and is usually considered to be synonymous with the term greater weight of the evidence”, or “greater weight of the credible evidence”. It is a phrase which, in the last analysis, means probability of the truth. To be satisfied, certain, or convinced is a much higher test than the test of “preponderance of evidence”. The phrase “preponderance of probability” appears to have been taken from Charles R. Cooper v. F.W. Slade, (1857-59) 6 HLC 746. The observations made therein make it clear that what “preponderance of probability” means “more probable and rational view of the case”, not necessarily as certain as the pleading should be.

101. The inalienable interface of presumption of innocence and the burden of proof in a criminal case on the prosecution has been succinctly expounded in the following passage from the treatise The Law of Evidence, 5th Edn. by Ian Dennis at page 445:

“The presumption of innocence states that a person is presumed to be innocent until proven guilty. In one sense this simply restates in different language the rule that the burden of proof in a criminal case is



on the prosecution to prove the defendant's guilt. As explained above, the burden of proof rule has a number of functions, one of which is to provide a rule of decision for the fact-finder in a situation of uncertainty. Another function is to allocate the risk of mis-decision in criminal trials. Because the outcome of wrongful conviction is regarded as a significantly worse harm than wrongful acquittal the rule is constructed so as to minimise the risk of the former. The burden of overcoming a presumption that the defendant is innocent therefore requires the State to prove the defendant's guilt."

[Emphasis supplied]

31. From the entire evidences available on the record, it is crystal clear that this case was lodged by the mother of the victim. The victim was not even aware of the reason as to why her mother had lodged the case. She has clearly stated in course of trial that she had not made any statement before police. The mother of the victim is a wholly unreliable witness as it would appear from her deposition that she claims to have received information about the occurrence from the neighbours over telephone but in her cross-examination, she has stated that she did not remember the name of the neighbour who made her a telephone call. The occurrence took place on 09.04.2015 at 7.00 AM, the maternal grandmother of the victim has stated that she left her house on the date of occurrence at 10 O' clock and returned in the evening. It is, therefore, crystal clear that at 7 O' clock in the morning PW-5 was very much present in the house. Therefore, the case of the prosecution that the



victim was alone in the house when the rape was committed is nothing but a false statement. This Court has reasons to believe that this case was concocted for purpose of extortion of money.

32. The learned trial court seems to have committed gross error in appreciation of the entire evidences on the record. We have, after going through the judgment of the learned trial court, found that even as the learned trial court found that there were no reliable evidence to make out a case against the appellant under Section 376 IPC but the court has wrongly interpreted the presumptions under Sections 29 and 30 of the POCSO Act without considering that the presumption of innocence is not lost. The basic foundational facts in this case are lacking. Once the victim herself says that she was not aware of the reason behind the lodgement of the case and she had not made any statement before police, this Court is unable to understand as to how the learned trial court can reach to a conclusion that the basic foundational facts are available. In the case of **Joy vs. State of Kerala** reported in **(2019) 1 KLT 935**, **Veerpal vs. State** reported in **2024 SCC OnLine Del 2686**, **Subrata Biswas and Another vs. State** reported in **2019 SCC Online Cal 1815**, the Hon'ble High Courts have considered that how the proof of foundational facts would be



required before drawing a presumption under Sections 29 and 30 of the POCSO Act.

33. This Court finds that the trial court has acquitted the appellant of the charge under Section 376 IPC by recording a finding that the offence under Section 376 IPC has not been established by the prosecution with the help of the evidences on the record and there is nothing on the record to disclose the fact that the accused had committed the act but having said so the learned trial court proceeded to record that there is no provision like Sections 29 and 30 of the POCSO Act for the present offence under Section 376 IPC which in itself will give presumption like earlier. This has been made basis to record conviction under Section 4 of the POCSO Act. It is, therefore, evident to this Court that the learned trial court has been completely swayed away by a misunderstanding of the presumption contained under Sections 29 and 30 of the POCSO Act.

34. We are of the considered opinion that it is a case of no evidence. We are also of the opinion that the case was lodged for purpose of extortion of money. This is high time for the Court to take a view that in such cases where it is found that a false complaint was lodged, liberty be given to the accused-appellant who is getting acquitted to take appropriate steps by filing a



complaint in terms of Section 22 of the POCSO Act. Section 22 reads as under:-

"22. Punishment for false complaint or false information.—(1) Any person, who makes false complaint or provides false information against any person, in respect of an offence committed under sections 3, 5, 7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.
(2) Where a false complaint has been made or false information has been provided by a child, no punishment shall be imposed on such child.
(3) Whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimizing such child in any of the offences under this Act, shall be punished with imprisonment, which may extend to one year or with fine or with both."

35. Before we part with this judgment, it is also required to be noted that Section 4 of the POCSO Act came to be amended Vide Amendment Act 25 of 2019 with effect from 16.08.2019. Prior to the said amendment, the punishment prescribed under Section 4 of the POCSO Act was imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine. The learned trial court seems to be totally unaware of the date of the amendment under Section 4 and has imposed the sentence of 20 years which was introduced only by way of amendment with effect from 16.08.2019.



36. We acquit the appellant of all the charges and grant liberty to take appropriate steps as may be advised to the appellant under Section 22 of the POCSO Act. If any such complaint is filed, the same will be considered by the competent court/investigating agency, as the case may be, on its own merit in accordance with law.

37. In result, the impugned judgment and order are set aside. The appellant is acquitted of the charge under Section 4 of the POCSO Act. The appellant shall be released forthwith, if not wanted in any other case.

38. This appeal is allowed.

39. Let a copy of this judgment together with the trial court records be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

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CAV DATE	
Uploading Date	13.08.2026
Transmission Date	13.08.2026

