

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (D.B.) No. 329 of 2023

Bhartu Yadav	-----		Appellant
	Versus		
The State of Jharkhand			Respondent

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Appellant	-----	: Mr. Lalit Yadav, Advocate
		: Mr. Prashant Kumar Rahul, Adv.
For the Respondent		: Mr. Pankaj Kumar Mishra, Addl.P.P.

Order No. 04 / Dated: 30th August, 2023
I.A. No. 6790 of 2023

The instant Interlocutory Application has been filed under Section 389(1) of the Code of Criminal Procedure seeking therein suspension of sentence dated 23.01.2023 passed by the Court of learned Special Judge POCSO, Deoghar, in POCSO Case No. 37 of 2020, arising out of Deoghar (Mahila) P.S. Case No. 4 of 2020, whereby and where under the appellant has been held guilty for the charge under Section 376 (1) of the Indian Penal Code and Section 4 of the POCSO Act, and is further sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.10,000/- (Ten thousand) and in default of payment of fine the appellant has been further sentenced to undergo simple imprisonment of six months for the charge under Section 4 of the POCSO Act and the period of custody during investigation and trial of this case is directed to be set off.

2. It has been contended on behalf of the appellant that it is a case where the prosecution has miserably failed to establish the charge said to be beyond reasonable doubt. Such submission has been made on the ground that there are contradictions in the testimony of the prosecution witnesses.

3. It has further been argued by referring to the testimony of P.W.-4, the victim, P.W.-1, the mother, and P.W.-2 the father, having major

contradictions and in view thereof the learned Trial Court ought to have taken into consideration the aforesaid contradiction before coming to the conclusive finding of proving the charges said to be proved beyond all reasonable doubts.

4. Further submission has been made that even the doctor has not corroborated the prosecution version as has been deposed by the victim, P.W.-4. Learned counsel on the aforesaid premise has submitted that it is a fit case where the sentence is to be suspended.

5. While on the other hand Mr. Pankaj Kumar Mishra, learned Additional Public Prosecutor appearing on behalf of the State has submitted by referring to the testimony of P.W. -4, the victim, who has corroborated the prosecution version and remained consistent as to what she had stated while recording her statement under Section 164 of the Cr.P.C.

6. Learned Additional Public Prosecutor based upon the aforesaid submission has submitted that if the learned Trial Court by taking the consideration the testimony of P.W.-4, who remained consistent all along, if has convicted the appellant for the offence under Section 4 of the POCSO Act and Section 376(1) of the Indian Penal Code, the same cannot be said to suffer from any error and in that view of the matter, it is not a fit case for suspension of sentence.

7. We have heard learned counsel for the parties, perused the finding recorded by the learned Trial Court in the impugned judgement as also the documents available in the Lower Court Records.

8. It is evident from the fact that the age of the victim has been assessed to be of 14 years and there is no challenge with respect to the age of the victim. The victim has deposed about the commission of crime of rape upon

her by the appellant. Her statement was recorded under Section 164 of the Cr.P.C. as has been marked as Exhibit-1, wherein the victim has disclosed the entire occurrence and by corroborating her version as was recorded under Section 164 of the Cr.P.C. has deposed in the Court in support of the prosecution version about the commission of crime of rape by the appellant.

9. The doctor although has found no sign of rape, which is the ground taken by the appellant by submitting that there is no ingredient of Section 376(1) of the Indian Penal Code.

10. This Court is of the view that so far as the argument advanced on behalf of the appellant that the doctor has not found any sign of rape is concerned, is insignificant in view of the version of P.W.-4, the P.W.-1 and P.W.-2, the mother and father, Furthermore, that under the nature of the offence either under Section 376(1) of the Indian Penal Code or under Section 4 of the POCSO Act, it is not necessary to have a physical relationship so as to attract the aforesaid provision.

11. Since the P.W.-4, victim, has corroborated the aforesaid version coupled with its corroboration by P.W.-1 and P.W.-2,, we have not found any reason to suspend the sentence.

12. Accordingly, the aforesaid Interlocutory Application bearing I.A. No. 6790 of 2023, stands rejected.

13. It is made clear that any observation made herein above will not prejudice the case of the parties since the appeal is lying pending for its consideration.

(Sujit Narayan Prasad, J.)