

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (S.J.) No. 371 of 2019

[Against the judgment of conviction and order of sentence, both dated 04.02.2019 passed in Special (POCSO) Case No. 16 of 2018 arising out of Pakartand P.S. Case No. 05 of 2018 corresponding to G.R. No. 140 of 2018 by the learned Additional Sessions Judge-I cum – Special Judge (POCSO Act), Simdega]

Sonu Thakur @ Sanoj Thakur, aged about 20 years, son of Sri Devendra Thakur, Resident of Village- Keunddih, P.O. & P.S.- Pakartanr, District-Simdega
--- --- **Appellant**

Versus

The State of Jharkhand
--- --- **Respondent**

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For the Appellant : Mr. Shankar Singh, Advocate
For the State : Mr. Bhola Nath Ojha, Spl.P.P.

PRESENT
HON'BLE MR. JUSTICE RAJESH KUMAR

J U D G M E N T

By Court

1. Heard learned counsel for the appellant and learned Spl.P.P. representing the State.
2. The present appeal has been preferred against the judgment of conviction and order of sentence, both dated 04.02.2019 passed in Special (POCSO) Case No. 16 of 2018 arising out of Pakartand P.S. Case No. 05 of 2018 corresponding to G.R. No. 140 of 2018 by the learned Additional Sessions Judge-I cum – Special Judge (POCSO Act), Simdega, whereby the appellant has been convicted for the offence punishable under Sections 363 and 376 of the IPC and Sections 4, 8, 12 of the POCSO Act, 2012 but he has been sentenced to undergo R.I. for 7 years with a fine of Rs.10,000/- and a default sentence of R.I. for 3 months under Section 4 of the POCSO Act; R.I. for 3 years with a fine of Rs.10,000/- and a default sentence of R.I. for 3 months under Section 8 of the POCSO Act and R.I. for 3 years with a fine of Rs.10,000/- and a default sentence of R.I. for 3 months under

Section 12 of the POCSO Act.

3. The criminal law has been put into motion on lodging written report being Pakartand P.S. Case No. 05 of 2018 by the informant namely Jorge Dungdung before the Officer-In-charge, Pakartand Police Station on 10.03.2018.

The brief story as per the prosecution is that the informant has shown apprehension that his victim- daughter, aged about 16 years, might have been taken from Simdega to Bangalore after enticing her by the accused Sonu Thakur.

4. Apart from it, earlier also a written application was filed by the informant before the C.W.C, Simdega with regard to the same allegation and the written application was forwarded by the Chairman, CWC, Simdega on 23.02.2018 to the learned Principal Magistrate, J.J. Board, Simdega who sent it to the Officer-in-charge Pakartanr, Police Station through the S.P., Simdega for registration of a case. Thereafter S.P., Simdega directed the officer-in-charge Pakartanr Police Station to institute a case and on the basis of written application of the informant on 10.03.2018, as above, Pakartanr P.S. Case No. 05 of 2018 for the offence punishable under Section 363, 366-A of the IPC, Section 8(3) (4) of the J.J. Act was instituted against the accused and in course of investigation Section 376 of the IPC and Sections 4,8 and 12 of the POCSO Act were added.

5. On the basis of the investigation, the Police has submitted the chargesheet under Sections 363, 366-A, 376 of the IPC and Sections 4,8 and 12 of the POCSO Act, 2012. After taking cognizance by this Court, the case was proceeded for trial.

6. After appearance of the accused, the charge under Sections 363, 376 of the IPC and Section 4, 8 and 12 of the POCSO Act, 2012 was framed, which was explained to the appellant to which he pleaded not guilty and claimed to be tried.

7. To substantiate the prosecution story altogether nine prosecution witnesses have been examined. Their brief statements are

as follows:

- I. **P.W.1(Jorge Dungdung)** – He is the informant and father of the victim. He has supported the prosecution story. As per him the age of the victim is about 16-17 years.
- II. **P.W.2(Hileria Dungdung)** – She is the mother of the victim. She has also supported the prosecution story. As per her, the age of her daughter is about 15-16 years.
- III. **P.W.3(Victim)** – She has supported the prosecution case. She has stated that her date of birth is January 2000 and as such on completing 18 years of age, she had gone with the accused on her own will as she has love relation with the accused and both were ready to marry but her parents were not ready.
- IV. **P.W.4(Sushil Tete)** – He is a co-villager and also a hearsay witness. He has not stated anything about the age of the victim.
- V. **P.W.5(Anil Kullu)**- He is the son-in-law of the informant and has supported the prosecution story. He has also not stated anything with regard to the age of the victim.
- VI. **P.W.6 (Nicolas Dungdung)**- He is a co-villager, who has turned hostile.
- VII. **P.W.7 (Dr. Bela Francisca Ekka)** – She is the medical officer who has examined the victim and assessed the age of the victim. Thereafter, a medical board was constituted as there was a dispute regarding the age of the victim and as per the medical board signed by three doctors and proved by P.W.7 herself, the age of the victim has been assessed to be about 17-18 years.
- VIII. **P.W.8(Jairam Sardar, Inspector of Police)** – He is the investigating officer of the case. He has admitted that the certificate has been given by the school in question, but neither he has examined the school register nor he has taken

the statement of the principal of the said school.

IX. **P.W.9(Sri S.S. Tirkey)** – He is the Judicial Magistrate who has recorded the statement of the victim under Section 164 of the Cr. P.C.

8. The prosecution has also adduced documentary evidence as under:

- I. **Exhibit -1-** Written application .
- II. **Exhibit-2-** Written application to C.W.C.
- III. **Exhibit-3** –Signature of Heleria Dungdung on police medical requisition.
- IV. **Exhibit-3/1-** Signature of the victim on police medication requisition.
- V. **Exhibit-4** –Signature of victim on the statement under Section 164 Cr.P.C.
- VI. **Exhibit-5 & 5/1-** Medical examination report and Medical Board report.
- VII. **Exhibit-6-** F.I.R
- VIII. **Exhibit 3/2-** Police Medical requisition
- IX. **Exhibit-7-**Age proof of the victim
- X. **Exhibit-8-** Statement under Section 164 of the Cr.P.C.

9. After conducting full-fledged trial, the learned Trial Court has convicted and sentenced the appellant as aforesaid.

10. Learned counsel for the appellant has submitted that the learned Trial Court has not appreciated the evidences on record in right perspective. The testimony of the victim has not been considered as she has stated that her date of birth is January 2000 and as such, she was major. Further, the Medical Board has also assessed the age of the victim to be 17-18 years. It has been submitted that there are lacunae in the investigation of the Investigating Officer, who has neither inspected the school register nor enquired from the principal of the school regarding the veracity of the certificate issued by the School. The principal of the school has not been examined during trial. Based

on aforesaid ground, learned counsel for the appellant has submitted that the impugned judgment suffers from infirmity and cannot sustained in law.

11. Learned counsel for the State has supported the judgment of conviction passed by the learned Trial Court and has submitted that there are enough materials on record to prove the prosecution case.

12. Heard learned counsel for the parties and after perusal of the record, it appears that the prime dispute in the present case is with regard to the age of the victim because the victim herself has stated that she was willing to go with the boy i.e., the accused and they were in love and that has been objected by the parents. It further appears that the girl in question had taken admission in the school on 07.05.2016 disclosing her age as 13.01.2002. Thus, *prima facie* it appears to be highly improbable, especially, in view of the fact that neither the school register has been scrutinized nor the principal of the school has been examined and further no investigation has been made by the investigating officer.

13. Thus, so far as the age is concerned, the only reliable evidence available is the report of the Medical Board which suggests the age of the victim to be between 17-18 years and this has been corroborated by the victim herself disclosing her date of birth as January 2000 and it appears that on completion of 18 years they had decided to marry as they belong to different religion and as such objection was raised by the parents.

14. The learned Trial Court has taken the lower side of the medical assessment of the age of the victim, which is not acceptable. In such a scenario, the upper side has to be taken, especially when the age is supported by the victim herself.

15. In the present case the age has been disclosed differently by the mother and father. The school certificate also suggests manipulation and the girl has shown her willingness to get married with the appellant. Thus, both the parties are major and from the discussion

made herein above, it is clear that the victim girl has attained majority and she has every right to select a partner as per her choice.

16. Thus, this Court finds that the conviction of the appellant is bad in law based on assessment of age made by the Medical Board.

17. Thus, the impugned judgment of conviction and order of sentence, both dated 04.02.2019 passed in Special (POCSO) Case No. 16 of 2018 arising out of Pakartand P.S. Case No. 05 of 2018 corresponding to G.R. No. 140 of 2018 by the learned Additional Sessions Judge-I cum – Special Judge (POCSO Act), Simdega is hereby quashed and set aside.

18. The present criminal appeal is allowed and accordingly disposed of. Since, the appellant is on bail, he is discharged from the liability of the bail bond.

19. Let the Trial Court Record be sent to the Court below.

(Rajesh Kumar, J.)

A. Mohanty
Jharkhand High Court
Dated 6th May, 2026

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