

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.348 of 2014

Against the judgment of conviction 17.06.2014 and order of sentence dated 18.06.2014 passed by Shri Binay Kumar Sinha, learned 3rd Additional Sessions Judge, Begusarai, in Sessions Trial No. 481 of 2012/0005699 of 2013 (arising out of Bhagwanpur P.S. Case No. 28 of 2012)

=====

Naveen Kumar Thakur @ Naveen Thakur, Son of Shivpujan Thakur, Resident of Village- Suryapura, P.S. Bhagwanpur, District-Begusarai.

.... Appellant

Versus

The State of Bihar

.... Respondent

=====

Appearance :

For the Appellant : Mr. Sunil Kumar Thakur, Advocate.

For the State : Mrs. Abha Singh, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 04-11-2015

Heard learned counsel for the appellant and learned counsel for the State.

2. This appeal arises out of the judgment of conviction 17.06.2014 and order of sentence dated 18.06.2014 passed by Shri Binay Kumar Sinha, learned 3rd Additional Sessions Judge, Begusarai, in Sessions Trial No. 481 of 2012/0005699 of 2013 (Arising out of Bhagwanpur P.S. Case No. 28 of 2012) by which the appellant had been convicted for offence under Section 376 of Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and payment of fine of Rs.10,000/- and in default of payment of fine further sentenced to simple imprisonment for two months.



3. The prosecution case as alleged in the First Information Report by the informant Pinki Devi aged 28 years that on 01.03.2012 at 1.00 P.M. she along with her daughter Puja Kumari aged about two years were in her courtyard. In the meantime, her co-villager Naveen Kumar Thakur came there and took the daughter of the informant Puja Kumari in his lap and took away the victim in pretext for entertainment. After sometime the brother of the husband of the informant (Bhaisur) Hari Charan Thakur came making hullah that Naveen Thakur had committed illicit act with Puja Kumari and Puja Kumari was crying in maize field to the east of the house and lying there. On hulla the informant Pinki Devi (P.W. 6) along with her Gotni Tetri Devi (P.W. 5), Sahodri Devi, the mother-in-law, (P.W. 3), Gotni Indu Devi, (P.W. 4) ran towards field and saw that blood oozing out from private part of Puja Kumari and she was crying on top of her voice. Thereafter, the matter was reported to the Bhagwanpur Police Station. Police came and recorded the Fardbeyan of the informant. Fardbeyan was recorded at 3.00 P.M. on 01.03.2012 by Deepak Kumar (Exhibit-1) and on the Fardbeyan endorsement was made registering the case bearing Bhagwanpur P.S. Case No. 28 of 2012, dated 01.03.2012 and A.S.I. Ramesh Prasad took charge of the investigation.

4. The investigation proceeded. The I.O. recorded further



statement of the informant and other witnesses and inspected the P.O. the maize field of Village- Suryapura with boundary specified, the maize crop was found damaged and trampetted. The victim was medically examined by doctor and doctor found the injury on her private part of Puja Kumari and opined that rape was committed on her person as well as age assessed as two and half years and found blood stain over vulva, hymen found perineal tear extended, bleeding and opined after clinical examination that rape was found to have been committed on the person of the victim. Rupture tear was mended under anesthesia. Thereafter, police after investigation, submitted charge sheet, cognizance taken and case was committed to the Court of Sessions.

5. During trial, ten witnesses were examined. P.W.1 Hari Charan Thakur, P.W. 1 brother of the husband of the informant (Bhaisur) who has deposed that accused Naveen Kumar Thakur was standing in the maize field where Puja Kumari was crying and blood oozing out from her private part, P.W. 2 Mantun Thakur who deposed that on Hulla of Hari Charan Thakur he proceeded the maize field and saw Naveen Kumar Thakur was standing there and blood oozing out from private part of Puja Kumari, P.W. 3 Sahodri Devi stated that Puja Kumari was taken by the appellant to maize field and blood oozing out from her private part, P.W.4 Indu Devi and she has



deposed that while she was at her house, Puja was taken by Naveen in the maize field and committed illicit act with Puja and Puja has become unconscious, P.W. 5 Tetri Devi who has deposed that Puja was taken by Naveen Thakur and on hullah of Hari Charan she went there and found Puja was there, P.W. 6 Pinki Devi, she has also stated on Hullah of Hari Charan Thakur, P.W. 1 they went to the P.O. and found Puja was crying and blood oozing out from her private part. P.W. 7 Ramesh Prasad I.O. and he has stated that victim Puja Kumari was aged about 2 years and he took the investigation and went to the P.O. and Deepak Kumar, Officer-in-Charge also went to the place of occurrence and found blood oozing out from private part of Puja Kumari and she was in serious condition and he took the victim to Sadar hospital, Begusarai and recorded statement of the witnesses and inspected the maize field with specific boundary of east, west, north and south. In the east there was Bahia and further 1/2 kilometer there was Buri Gandak river, in the west bahia in maize field, in the north Bahia and thereafter Buri Gandak river and in the south there is Bahia and thereafter maize field and thereafter brick soiling work. He found maize field was damaged. P.W.8, 9 and 10 are the doctors and members of the medical board who examined the victim and has opined that rape on the person of victim was found and has proved medical report marked as Exhibit-2.



6. The trial court taking into consideration the evidence of witness both oral and documentary convicted the appellant in view of the fact that witnesses have supported the prosecution case that Naveen Kumar Thakur took the victim Puja Kumari from the courtyard to maize field and committed rape. Thereafter, on hullah of Hari Charan Thakur witnesses went there and saw Naveen Thakur standing there and blood oozing out from private part of Puja Kumari and doctor had opined that rape was committed upon the victim and to hold appellant was guilty for offence under Section 376 of Indian Penal Code and subsequently convicted and sentence as mentioned above.

7. Learned counsel for the appellant has challenged the order of conviction and sentence. It is contended that appellant has falsely been implicated in this case. It has further been contended that no independent witness has been examined to support the prosecution case as mentioned above. It has further been contended that allegation made against the appellant is inherently improbable and manifestly absurd and witnesses are not consistent in their evidence. It has further been contended that on seeing the occurrence, hullah was made by P.W. 1, but there is evidence that witnesses saw the appellant standing there and so the appellant remained standing on the place of occurrence and occurrence is highly improbable. It has further been



contended that the appellant who alleged to participate the occurrence, he would not find facilitate in standing before the police. It has further been contended that there is inconsistency in the evidence of the witnesses as P.W.1 in paragraph 4 in his deposition had stated that Puja Kumari was taken in the same state to the police station. P.W. 2 had stated that Puja was taken from the place of occurrence and police was informed. Further, P.W. 2 in paragraph 6 stated that when the Daroga came Puja was in the field in unconscious state. It is further submitted that in the evidence of P.W. 3 that Puja was brought then son and her daughter-in-law went to police station. P.W.5 had stated that Puja was taken to police station. Hence the witnesses are inconsistent in their evidence, one part of evidence that witnesses went to the police station where other part of evidence that witnesses have stated that police came to the P.O. and recorded statement of the informant. Hence contended that prosecution has not been able to prove the charges beyond reasonable doubt, so the appellant is entitled for benefit of doubt. It has further been contended that one set of witnesses stated that the victim was wearing cloth and other set of witnesses stated Puja was naked position so inconsistency in the evidence sufficient to hold that witnesses have not seen the occurrence and prosecution has not been able to prove the guilt for offence under Section 376 of Indian Penal Code.



8. I proceed to consider in the light of submission and evidence of witnesses. The prosecution case as alleged in the First Information Report that while the informant was with her daughter Puja Kumari in the courtyard, the appellant Naveen Kumar Thakur came at about 1.00 P.M. took the victim Puja Kumari aged about 2 years in his lap for entertaining her as well as to play with her, took the victim in the maize field. After sometime her Bhaisur, Hari Charan Thakur, P.W. 1 made hulla that Naveen Kumar Thakur was doing some wrong act with Puja Kumari in maize field to the east of the house. The victim was making cry on which witnesses rushed to the place of occurrence and saw appellant standing there and blood oozing out from private part of the victim. P.W. 6 is the informant and she had supported the prosecution case and she stated after the occurrence police informed and police came and recorded statement of the informant at 3.00 P.M. as apparent from the Fardbeyan itself. Hence in between 1.00 P.M. to 3.00 P.M. it is apparent that occurrence took place and even matter reported. Further she has stated that occurrence took place at 1.00 P.M. that Naveen Kumar Thakur came and took Puja Kumari aged about 2 years and took her in his laps. After sometime, Hari Charan Thakur made hullah about the occurrence that rape having been committed by Naveen Kumar Thakur with Puja Kumari. Thereafter, the informant rushed there and



found blood oozing out from private part of Puja Kumari. P.W. 1 Hari Charan Thakur had also supported the prosecution case that while he was returning after attaining call of nature he saw Puja Kumari weeping and Naveen Kumar Thakur was standing there and blood oozing out from private part of Puja Kumari. However, other witnesses have also supported the prosecution case and on hullah they rushed to the place of occurrence and saw victim was crying and blood oozing out from her private part.

9. P.W. 8, 9, and 10 are the doctors and constituted a Medical Board and their evidences as apparent that on examination of genital part of victim Puja Kumari on 01.03.2012 itself at 5.00 P.M. found that blood stain over vulva, hymen found perineal tear and causing bleeding and it has been opined that rape having been committed on the person of the victim. Hence from the evidence it is apparent that at 1.00 P.M. Navin Kumar Thakur came and took the victim in his laps and took her and just after taking the victim, hullah was made by Hari Charan Thakur, P.W. 1 and witnesses rushed to the place of occurrence and found victim was crying and blood oozing out from private part of the victim and doctor had specifically opined that rape having been committed and from this evidence it can well be inferred that rape having been committed by the appellant, Naveen Kumar Thakur.



10. However, the statement of sole accused Naveen Kumar Thakur was recorded under Section 313 of Cr.P.C. and he denied his implication in the alleged occurrence but has not given any explanation. However, there is specific allegation against the appellant that he took the victim in his laps and committed rape upon her. However, in this point he has not given any satisfactory explanation except answering the question in negation. It is true that there may not be no eye witness to the occurrence that victim having been taken by the appellant and just after taking the victim she was found along with the appellant where blood oozing out from her private part and doctor confirmed about rape. Hence it is irresistible conclusion but nonetheless no explanation regarding rape came out from the statement of the appellant recorded under Section 313 Cr.P.C.

11. However, defence has set up as apparent from the record that no occurrence has been occurred and false implication of this appellant is due to enmity. However, nothing has been brought in record to suggest that there was enmity between the prosecution and the appellant.

12. Hence taking into consideration the entire facts and circumstance of the case, irresistible conclusion can be drawn on the facts that prosecution story is true. However, learned counsel for the



appellant contends that witnesses are interested witnesses. It is not in eye of law evidence of witnesses who were interested mechanically having been rejected outright. Further evidence of interested witnesses is required to be strictly scrutinized, unless there is inherent and improbable evidence of the witnesses are outright rejected in view of fact that witnesses are interested and inimical.

13. It has further been contended that no independent witnesses have been examined. However, occurrence took place near the house of the informant and on hullah of P.W. 1 Hari Charan Thakur, family members came at the place of the occurrence and saw the occurrence hence, their evidence was found reliable and trustworthy and cannot be outright rejected on the ground that no independent witnesses have been examined. However, it has been submitted that evidence of witnesses is absurd or highly improbable. It has been stated that appellant took the victim in maize field and on hullah informant and other witnesses rushed to the place of occurrence and saw appellant was standing there and blood oozing out from private part of the victim. The conclusion drawn on the evidence related to the prosecution story cannot be said either inherent, improbable or manifestly absurd as on hullah witnesses rushed to the place of occurrence and saw appellant was standing there and in the background of the fact that appellant himself had present there and it



is apparent that in the entire evidence it has come that appellant took the victim in his laps. However, suggestion given that appellant Naveen Kumar Thakur was mad and has falsely been implicated as there is land dispute between the parties. However, there is nothing in the evidence to believe the suggestion or even to disbelieve the evidence of P.W. 6.

14. However, defence set up that Naveen Kumar Thakur was mad, but no evidence adduce in defence regarding his treatment about madness and suggestion made that appellant was mad itself not much help of defence.

15. The contention that evidence of the witnesses are inconsistent with each other. However, evidence of witnesses are consistent regarding the fact that victim was taken by the appellant. P.W. 1 Hari Charan Thakur saw and made hullah and it was found blood oozing out from private part of the victim. However, this fact confirmed by the doctor who opined rape was committed and witnesses have deposed that they saw the appellant was standing at the place of occurrence and blood oozing out from private part of the victim. The inconsistency pointed is evidence of witnesses that some had stated that victim was taken to police station and some had stated victim was in the village and police come. Further inconsistency pointed out that whether the victim was naked or wearing cloths.

Further inconsistency pointed out regarding the fact whether statement recorded at place of occurrence or in the police station. However, the inconsistency pointed out itself, does not go to the root of the prosecution case to disbelieve the prosecution story regarding rape. However, for the discrepancy pointed out, the evidence of the witnesses cannot be outright rejected. Further, inconsistency pointed out does not go to the root of the prosecution case and shake the **substratum**, of the prosecution case. Hence prosecution case cannot be rejected.

16. Regard being had to the facts and circumstances of the case, I find that prosecution has been able to prove the charges beyond all reasonable doubt. I do not find any merit in the case to interfere with the order of conviction and sentence recorded by the trial court.

17. The appeal is **dismissed** accordingly.

(Gopal Prasad, J)

m.p.
NAFR

U		T	
---	--	---	--