

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.481 of 2010

Against the judgment and order of conviction dated 01.05.2010 and 10.05.2010 passed by Sri Kashi Nath Sharma, the learned Additional District & Sessions Judge, F.T.C.III, Siwan, in Sessions Trial No. 569 of 2007.

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Baban Prasad, Son of Manbodh Prasad, resident of Village-Basantpur, P.S.-Basantpur, District- Siwan.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Purushottam Sharma, Advocate.

Mr. Krishna Kumar Sharma, Advocate.

For the State : Mr. Akshay Lal Pandit, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 03-09-2015

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

2. This appeal arises out of the judgment and order dated 01.05.2010/10.05.2010 passed by Sri Kashi Nath Sharma, the learned Additional District & Sessions Judge, F.T.C.III, Siwan, in Sessions Trial No. 569 of 2007 by which the appellant has been convicted for offence under Section 376 of Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs. 2,000/- and in default of payment of fine further undergo to simple imprisonment for six months.

3. The prosecution case as alleged in the First Information Report by the informant Rajpati Devi, the mother of the victim that on

21.09.2007 at about 19.00 hours, i.e., 7.00 P.M. her daughter Anuradha Kumari aged about 8 years had gone to Bazar to visit Mela. When her daughter did not return by 9.00 P.M., then she became anxious and came to Bazar in search of her daughter, Anuradha Kumari. She learnt that one Babban Prasad of her Mohalla, the appellant had given chocolate to Anuradha and took her towards river, when the informant went towards river for making out search of her daughter, then she saw her daughter Anuradha Kumari making cry and weeping by the side of the river and found the panty of her daughter besmeared with blood. She consoled Anuradha Kumari to stop crying and on enquiry, Anuradha Kumari disclosed that while she was roaming in Mela then Babban Prasad of the said Mohalla gave her chocolate after purchase and asked her to follow him to go. Thereafter, Babban Prasad, the appellant kept her hand and took her on the bank of river Saraia and there he pulled down her panty with one hand and gagged her mouth and by force did illicit intercourse and when she used to cry then assault her. After sometime, he left her and fled away. She was unable to get up and her panty was besmeared with blood. The occurrence took place on 21.09.2007 at about 19.00 hours but the mother reported to the police on 22.09.2007 at 18.50 hours at Police Station, the delay has been explained that her husband used to live outside and he had to contact her husband for coming to Police Station to record her statement before S.H.O. She

claimed that Babban Prasad by giving her chocolate enticed to take her to bank of river and forcibly raped her. On her statement, F.I.R. lodged at 18.50 hours on 22..09.2007 and investigation proceeded.

4. P.W. 7 is the Police Officer has proved Exhibit 3 which is formal F.I.R. and he proceeded with the investigation He further recorded statement of the informant. The panty and samij of the victim was produced before him by the informant. He was prepared seizure list of said Panty and Samij and got the signature of the witnesses on the seizure list. Seizure list marked as Exhibit-4. The panty and samij marked as Material Exhibit X and X/1. The said articles were kept in P.S. Malkhana. He has also proved the entry 182 of Malkhana register regarding panty and samij. He has also proved carbon copy of Malkhana register prepared in carbon process marked as Exhibit-5. He had also proved seized kachia (Panty) and Samij marked as material Exhibit X and X/1. He inspected the bank of river Saraia where he found blood stain on the grass and had given boundary of the P.O. Further he recorded the statement of the victim and got the victim examined by the doctor. Thereafter, submitted charge sheet. On submission of the charge sheet, cognizance was taken, the case was committed to the Court of Sessions. After commitment, the charge was framed under Section 376 of Indian Penal Code. The documentary evidence has been adduced by the prosecution as Exhibit-1 signature of Krishna Sah on the F.I.R,

Exhibit-2 signature of doctor on the injury report, Exhibit-3 Formal F.I.R. signature by Incharge, P.S., .Exhibit-4 seizure list and Exhibit-5 Malkhana Register, Exhibit X and X/1 panty and samij.

5. After framing of the charge, seven witnesses were examined by the prosecution who are P.W.1 Krishna Sah formal witness who has proved his signature on Exhibit-1 Formal F.I.R., P.W. 2 Gautam Sah has been declared hostile, P.W. 3 is informant Rajpati Devi, P.W.4 is the victim Anuradha Kumari, P.W. 5 is the doctor, Ranjita Srivastava, who examined the victim, P.W. 6 is Choukidar who has come to prove the Malkhana register, P.W.7 is the I.O.

6. The defence has also adduced one witness as D.W. 1 Madan Sah and has taken up the defence that no occurrence as alleged had occurred and there was land dispute between the informant and the appellant and informant tried to grab the land of the appellant so he had falsely been implicated and false implication is due to the fact that informant want Bathan standing in front of the house of the appellant to be transferred to her.

7. The trial court taking into consideration both oral and documentary evidence of the witnesses, convicted the appellant and sentenced as mentioned above at the outset.

8. Learned counsel for the appellant however has challenged the order of conviction and sentenced recorded by the trial court on



the ground that there was delay in lodging the F.I.R. It has further been contended that evidence of the witnesses P.W. 3 and 4 which were contradictory to the extent that P.W.3 stated in her statement that victim P.W.4 went to Mela along with 4-5 children whereas the victim stated that she had gone to Mela alone. It has further been contended that evidence of the Doctor does not support the prosecution case regarding rape as doctor in her evidence has stated that no spermatozoa was found either dead or alive.

9. On the respective submissions, I proceed to consider the evidence in the light of submissions made out. However, P.W. 4 is the victim who had supported the prosecution case that she had gone to Mela in the evening and she met Babban Prasad in the Mela and Babban Prasad gave her chocolate and asked her to follow him to the house and took her at the bank of river and there he raped her by untie her panty and pressing her mouth. The mother of the victim P.W. 3 came in search of her found her weeping with panty besmeared with blood and blood oozing out from private part there and took her to the house. The victim disclosed about the occurrence and then mother took her to police station and there statement of the informant and the victim recorded by the Daroga.

10. P.W. 3 is the informant she had corroborated that victim had gone to visit Mela at about 7.00 P.M. but she did not return then she make out search and learnt from 4-5 children that Babban Prasad

gave chocolate to the victim P.W. 3 and asked her to follow to his house and when she make proceed to search of her daughter, she found Anuradha Kumari P.W.4 weeping on the bank of river and disclosed about the occurrence and blood oozing out of her panty.

11. However, occurrence is dated 21.09.2007 at about 9.00 P.M., but F.I.R. lodged on the statement of informant P.W. 3 on 22.09.2007 at 6.50 P.M. However, delay in lodging the F.I.R. by P.W. 3 has been explained that since her husband live outside, she tried to contact him and this had caused delay in lodging the F.I.R. So the delay has been properly explained.

12. From the evidence of P.W. 3 and 4, it is apparent that they had supported the prosecution case as P.W. 4 had supported the prosecution case regarding the occurrence and her evidence had been corroborated by P.W. 3. P.W.3 in her evidence stated that just after occurrence when she reached at the bank of river she found the victim P.W. 4 weeping and blood oozing out from her private part has caused the panty besmeared with blood and she disclosed her mother about the occurrence and name of the appellant. Though, P.W. 4 in her evidence stated that she went to Mela alone, whereas P.W. 3 in her cross-examination stated that victim had gone along with 4-5 children. However, contradiction pointed out does not go to the root of the prosecution case to disbelieve the prosecution case about rape.

13. However, P.W. 5 is the doctor in her evidence stated that

she had examined the victim on 23.09.2007 at 11.20 A.M. and had find by vaginal examination:-

“.....dried blood mixed stain around and external genital area and in both genital region. There was first degree perineal tear in the mid line, having sign of healing and she has no menstrual as per menstruation history. She has further found that epithelial cells seen 0-2 H.P. report. She has further found no spermatozoa seen either dead or alive”.

The doctor P.W.5 in her cross-examination has stated that she examined the victim and found there was blood stain which was light red colour. She mentioned her age as 7-8 years and has stated whatever she had reported that cannot be manufactured. Hence as per evidence of this witness P.W. 5, she has found first degree perineal tear as per vaginal examination also found dried blood mixed stain around external genital region and has stated that report cannot be manufactured. Though, criticism of the evidence of the doctor that since she had not found spermatozoa either dead or alive, so there was no rape. However, on this ground alone evidence of this P.W.5, doctor on rape cannot be rejected rather evidence of doctor corroborates the occurrence of rape. She found dried blood mixed stain and there was first degree perineal tear in the mid line having sign of healing clearly indicates the rape. The victim P.W. 4 was examined on 23.09.2007 whereas occurrence took place on

21.09.2007 at 9.00 P.M., i.e., more than 36 hours. The I.O. had also supported the prosecution case and he found blood stain on the grass at the place of occurrence.

14. Hence, taking into consideration the evidence of the prosecution witnesses, they have supported the prosecution case about rape and evidence of victim P.W. 4 is corroborated by P.W. 3 that just after the occurrence she reached at river and victim was crying and she disclosed about occurrence and about the appellant and blood oozing out and panty besmeared with blood and P.W. 4 herself named the appellant and her evidence corroborated with the statement of mother of the victim, P.W. 3 to whom the victim disclosed about rape and time of occurrence just after the occurrence. The evidence of doctor confirms the rape and is also an evidence to corroborate the evidence of P.W. 4 about rape.

15. However, submission to reject the evidence of P.Ws. 3 and 4 on the score that there is contradiction in the evidence of P.W. 3 and 4 about going to Mela along with 4-5 children or alone but the contradiction pointed out does not go to the roof of prosecution case to reject the testimony of witness on rape. The evidence of the doctor and P.W. 3 and 4 cannot be rejected on this ground.

16. The learned counsel for the appellant has placed reliance on the decision reported in 2015 (1) BLJ 120., Puttu Kumar Laheri Versus The State of Bihar. However, the decision reported is not

applicable either to the fact and circumstance of this case or on law as the fact of the case in **2015 BLJ** is that victim was five years old grand daughter of the informant and though, prosecution case that blood oozing out from her private part and panty sent for chemical examination but F.S.L. report does not find any blood, the doctor who examined the victim did not find any injury nor find hymen rupture and on objective evidence found by the doctor, neither the victim examined nor any eye witness to the occurrence.

17. Hence, I do not find any merit in this appeal as prosecution had been able to establish the charges. Accordingly, order of conviction and sentence recorded by the trial court is sustained and as there is no merit to interfere with the order of conviction and sentence recorded by the trial court. Hence, the appeal is dismissed.

m.p.
NAFR

(Gopal Prasad, J)

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