

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.32 of 2011

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RAMDENI RAM LATE RAMPRIT RAM RESIDENT OF VILLAGE.-
JADOPUR, P.S.-JADOPUR,DIST.-GOPALGANJ

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Shekhar Singh, Adv.

Mr. Rajiv Kumar, Adv.

For the State : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 21-08-2015

Sole appellant Ramdeni Ram who has been found guilty for an offence punishable under Section 376 IPC vide judgment of conviction dated 06.09.2010 and sentenced to undergo R.I. for ten years vide order of sentence dated 07.09.2010 rendered by the First Additional Sessions Judge, Gopalganj in Sessions Trial No.458 of 2009 has preferred instant appeal in order to challenge the same.

2. PW.1, Sangita Devi filed written report on 01.05.2009 at about 11:30 AM disclosing therein that her scrap shop runs under tenancy of Munilal Prasad adjacent to Jadopur P.S. wherein she resides with her family. On 30.04.2009 at about 07:00 PM while she was sitting at her shop along with her



children, Ramdeni Ram, who happens to be resident of adjacent mohalla, lifted her daughter Babita Kumari, aged about four years and began to play with her and then took her away on the pretext of providing sweets. She could not understand at that very moment therefore, she got herself engaged in domestic work. When her daughter did not return even after two hours then, she called her husband and disclosed the event. They gone in search of her daughter and during course thereof, they heard cry of her daughter whereupon they rushed towards the direction and found Ramdeni Ram fleeing therefrom. Her daughter was lying in a field adjacent to brick-kiln and was weeping. When they gone near her, she found her daughter naked. There was bleeding. She lifted her daughter. They tried to apprehended accused but he succeeded in his escape. They made search of the accused whole night but failed and then, filed instant case.

3. On the basis of the aforesaid written report, Jadopur P.S. Case No.18 of 2009 was registered and investigation was taken up during course of which, the victim was medically examined, statement of witnesses were recorded and after completing the same, charge sheet was submitted facilitating trial which ultimately concluded in conviction and sentence, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement of the accused under Section 313 of the Cr.P.C. is of complete denial. However, neither any DW

nor any kind of document has been exhibited.

5. In order to substantiate its case, prosecution has examined altogether seven PWs out of whom PW.1 is Sangita Devi, informant, PW.2 is Sheoshankar Prasad Soni, father of victim girl, PW.3 is Krishna Sah, PW.4 is Raghunath Prasad Soni, PW.3 & PW.4 brother-in-law of informant, PW.5 is Satyendra Chaudhary, Investigating Officer, PW.6 Dr. Rajani Singh who had examined the victim and PW.7 is Babita alleged victim. Side by side had also exhibited Ext.1-Signature of informant over written report, Ext.1/1-Signature of PW.2, Ext.2-Formal First Information Report Ext.3, Ext.4 –Injury report.

6. It has been submitted on behalf of Learned counsel for the appellant that the judgment impugned happens to be cryptic, perverse on account of none appreciation of the materials available on the record in its right perspective. The first and foremost argument happens to be that appellant has been victimized on account of wrong identification in the background of the fact that there happens to be consistent disclosure made by the witnesses that they made hectic search, they also requisition loudspeaker in order to call out but save and except the family members none of the independent witness came forward to support the same. Instead thereof, prosecution based its case on the evidence of family member who too have no occasion to show their competency. Had there been genuine, sincere effort as claimed, then, at least the occurrence would

have been supported by independent witnesses also. That suggest that the occurrence as alleged arraying the appellant to be responsible for the same is not at all found corroborated by an independent witness. Moreover, prosecution had failed to show that appellant had evil eye over the victim since before, and that being so, the allegation did not found probable one.

7. Then it has been submitted that there happens to be inordinate delay in institution of instant case which has not been properly explained more so, in the background of the fact that PW.1, informant had herself disclosed in her written report that her shop lies adjacent to Jadopur P.S. as well as witnesses also spoken like so. Had there been such kind of occurrence, loudspeaker was requisitioned for calling out the victim on account of missing, then certainly there would have been involvement of police officials at an earliest and that being so, the police official must have disclosed during course of evidence. Apart from this, the assertion that prosecution party continued searching of the accused /appellant whole night also did not inspire confidence in the background of the fact of the case as, the written report itself speaks pitiable condition of the alleged victim on account of injuries having over her person. She was expected to be provided medical treatment immediately and for that, the prosecution must have rushed to the hospital directly or through process of law by informing the police at night itself. So, institution of present case having undue delay speaks a lot

relating to its authenticity.

8. It has further been submitted that after going through the evidence of PW.2 father of alleged victim, it is evident that he had not supported the version of the informant as he claimed to be present at his shop during the whole tenure while PW.1 had stated that he was called upon informed and then, they began to search. Therefore, the conduct of the prosecution appears to be suspicious and on account thereof, the version of the prosecution that appellant had taken away the victim and further was found fleeing from place where victim has been alleged to be ravished appears to be incredulous and that being so, the judgment of conviction and sentence recorded against the appellant is fit to be set aside.

9. At the other end, the learned Additional Public Prosecutor supported the finding recorded by the learned trial court and submitted that in a rape case delay in institution of the case does not matter because the nature of act affects not only the victim rather also affects adversely upon the prestige of the family as well as also cast stigma which, ordinarily the guardian has to perceive and then, has to made up their mind for institution of this case. Then it has been submitted that from the medical evidence the factum of rape is found proved and further, by a consistent evidence appellant has been identified to be the culprit. Therefore, the judgment of conviction and sentence did not attract inference.



10. Coming to the evidence of the material witnesses, it is evident from the evidence of PW.4, that he was not at all involved at any stage as he has stated that after returning from Gopalganj he came to know about the occurrence and further found the victim in an injured condition and then had disclosed presence of injuries at different part of her body. PW.3, had stated that he along with Sheo Shankar, Raghunath (PW.4) and *Bhawah* Sangita gone in search of victim. He was carrying torch. During course of search they have gone towards brick-kiln and heard cry of victim over which they rushed and found Ramdeni running therefrom. Babita was lying on the earth and was crying like anything. Blood was coming out, having injuries over different parts of body. She was naked. She was lifted to their house. Victim was treated at Gopalganj Hospital and on the following morning, case was instituted. During cross-examination, it is evident that defence had not cross-examined to test his veracity with regard to, at least witnessing the accused fleeing from the place where victim was lying, crying as well as having presence of injuries over her person. At the end at para-8, it has been suggested to this PW that injury was manufactured.

11. PW.2 is the father of the alleged victim. He stated that on 30.04.2009 at about 07:00 PM he was at his shop lying behind Jadopur P.S. wherein they also reside. At that very moment his wife, two sons and daughter Babita was there. They were playing. Babita is aged about four years. During course

thereof, Ramdeni came, lifted Babita and began to play with her. He took her away for providing sweet. When he did not return even after 1 and 1½ hours then he rushed to the house of Ramdeni, inquired from family members who shown their ignorance. Then, thereafter, they began to search. Then they had gone towards abandoned brick-kiln wherefrom they perceived cry of Babita whereupon he along with his brother Krishna Prasad (PW.3) and wife rushed. He had seen Ramdeni indulged in committing rape. When he (Ramdeni) seen them, he escaped therefrom. He rushed but he succeeded in his escape. Then he had disclosed presence of injuries at different parts of body, including sign of biting over cheek. Then they lifted the victim. He took the victim to Dr. Guru Prasad who directed him to take the victim to P.S. whereupon they have gone to P.S. and instituted the case. During cross-examination, it is evident that this witness has not been cross-examined at the end of accused on material point save and except over source of identification. At para-12 wherein he had disclosed that he was carrying torch and the same was shown to the police under para-13 of his cross-examination. At para-14, 15 there happens to be admission on his part regarding his statement made before the police that there was swelling over body of his daughter, blood was oozing out. There was biting sign at her cheek. Lip was swollen. He further stated before the police that she was ruthlessly raped. In para-16 he had denied the suggestion that no rape was committed with

his daughter. In para-17 he had denied the suggestion that victim was assaulted by his wife on account of which she had sustained injury.

12. PW.1 is the informant. She came before the court along with the victim. She had deposed that on the alleged date and time of occurrence, her daughter Babita Kumari was playing with other kids. At that very moment Ramdeni came near her, lifted her and took her away on the pretext of providing sweets. She had further stated that Ramdeni used to come at her shop. As her daughter did not return therefore, she had disclosed to her husband who arrived in between that Ramdeni had taken away Babita and did not return, on account thereof, they all gone in search of victim. They also took help of loudspeaker in getting her called out. During course thereof, when they gone towards brick-kiln she heard sound of crying that was of her daughter whereupon they rushed. Ramdeni, seeing them, began to flee and succeeded in his escape. Victim was naked. Blood was oozing from her private part. There was bite sign over her cheek. There was swelling of lip. Blood was also coming from anus. Then, thereafter they have gone to police station and recorded her fardbeyan. The victim was examined at Sadar Hospital. During cross-examination in para-11, she had stated that they have arrived at the place of occurrence while rape was being committed. She had further disclosed that accused ran therefrom seeing them. She had claimed herself to be an eye witness to

occurrence. At para-12 she had stated that P.O. is at lonely place lying less than half kilometer from her house. In para-13 she had disclosed that at the time of lifting the victim, she was in pull of blood.

13. PW.7 is the victim. On query made by the Additional Public Prosecutor she had pointed out the accused that he was the person who had taken away on the pretext of providing sweet, assault as well as biting over her cheek. During cross-examination as well as from the query made by the court, it is apparent that she was not competent to appreciate the questionnaire properly.

14. PW.6 is the doctor who had examined the victim and had found following injuries on her person:

- I. Human bite on left cheek.
 - II. Linear abrasion $\frac{1}{2}$ " x $\frac{1}{4}$ " on back of chest + 1" x $\frac{1}{2}$ " on lower part of back.
 - III. Swelling on upper lip
 - IV. Linear abrasion 1 $\frac{1}{2}$ " x 1" on right cheek.
- Time of injury – within 24 to 36 hours caused by hard and blunt subject.

On examination of private part injury was found in following manner:-

Lower part of labia majora –
1" x $\frac{1}{2}$ " abrasion on left side
Hymen not intact
Vaginal opening admits tip of little finger.
Blood was coming out of the opening.

15. The doctor had opined presence of evidence of sexual assault including human bite at cheek as well as her age in between 3-4 years. During cross-examination, nothing

substantial is found save and except that there was no tear of internal vaginal wall.

16. PW.5 is the Investigating Officer who had stated that after registration of the case, he took up investigation, recorded statement of witnesses, visited the place of occurrence so detailed send the victim to Sadar Hospital, arrested the accused and then, after completing investigation, submitted charge sheet. In para-7, he had further stated that after apprehension of accused, victim was brought and she became frightened and further identified the accused to be her culprit. During cross-examination at para-11, he had stated that he had not found blood at the spot nor the tampering mark. In para-12 he had further stated that he had not requested medical examination of the accused. In para-14 he had further stated that he had not seized the apparel of victim. In para-15, he had stated that he had not seized the torch.

17. After going through the evidence of PW.6, doctor there happens to be concrete evidence with regard to commission of rape over the victim, aged about 3-4 years. Furthermore, from the evidence of PW.1, the informant she happens to be consistent over taking away the victim by the appellant /accused and since thereafter the victim was under custody of appellant till the time, they have gone to the P.O. from where, accused ran away seeing them. There happens to be no cross-examination at the end of the accused on that very score at least, to demolish his activity over taking away the victim as well as keeping her till that time

when she was searched out. More or less, that happens to be the evidence of PW.2 who also not been cross-examined on that very score. That being so, presence of victim under custody of accused till she was searched and found the place of occurrence where she was ravished is conclusively proved. Furthermore, there happens to be complete absence of explanation at the end of the accused that in between the intervening period, victim had fallen prey at the hands of any other individual, encircled the appellant /accused to be author of the crime. That being so, instant appeal is found merit less and is accordingly, dismissed. With regard to quantum of punishment it also did not require interference in the background of the fact that a girl aged about 3-4 years has fallen victim of lecherous activities of the appellant. Appellant is directed to serve out the remaining part of sentence.

(Aditya Kumar Trivedi, J.)

Patna High Court
Dated 21st day of Aug., 2015
Prakash Narayan

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