

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1311 of 2007

(Against the judgment of conviction dated 11.12.2006 and order of sentence dated 12.12.2006 passed by 1st Additional Sessions Judge, Madhepura in S.T. No. 199 of 2005 (arising out of Chausa P.S. Case No. 23 of 2005))

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Binod Sahni, son of Late Prakash Sahani, resident of village Ajgaiwa,
P.S.- Chousha, District- Madhepura.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Animesh Kumar Mishra (Amicus Curiae)

For the Respondent/s : Mr. Satya Narayan Prasad, APP.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 08-04-2015

Challenge in this appeal filed on behalf of the sole appellant is to the judgment of conviction dated 11.12.2006 and order of sentence dated 12.12.2006 passed by 1st Additional Sessions Judge, Madhepura in Sessions Case No. 199 of 2005 arising out of Chausa P.S. Case No. 23 of 2005. The Trial Court held him guilty under Section 376(2)(f) and sentenced to undergo rigorous imprisonment for life and also imposed fine of Rs. 25,000/- in default thereof to undergo further rigorous imprisonment for two years.

Factual background of the case as unfolded at the trial is



that on 1.5.2005 at about 8 O'clock in the morning, 10 years' old girl of the informant (P.W. 4) went to the maize field for keeping watch of the maize crop in the field. At about 10-10.30 a.m., the appellant, armed with *dabiya*, came and finding her alone under threat of assault, took her inside the crop of the field and raped her. The information of the occurrence was received by the witnesses. Thereafter the victim girl (P.W. 3) was brought to the house of her *Nana* Kailash Mandal (P.W.2). The Police received information of the occurrence and drew up a *Sanha* and proceeded to the village where the fardbeyan of P.W. 4 was recorded by Nand Kishore Singh, Sub-Inspector of Police, Phulaut O.P. on 1.5.2005 at 7 p.m. which set the criminal law in motion. The Investigating Officer recorded the statement of the victim girl (P.W.3), her mother (P.W. 4) and her *Nana* (P.W. 2). He seized the blood stained undergarment of the victim under a seizure memo and dispatched her the following day for medical examination. Upon conclusion of investigation, charge-sheet was led, which, on being committed, came to the file of the learned Trial Judge where charges were framed and explained to the appellant. He denied those charges and claimed trial. To further the prosecution version, as many as 7 witnesses were examined. Injury-cum-medical report of the victim prepared by P.W. 5 was proved as Ext.1. The R.T.I. of the informant on the fardbeyan was proved as



Ext.2. The formal F.I.R. drawn thereupon was proved as Ext. 3. Upon conclusion of the evidence of the prosecution, the statement of the accused was recorded under Section 313 Cr.P.C., wherein he abjured the guilt. No oral evidence, however, was led on behalf of the accused. On a consideration of the materials brought on record, the learned Trial Court found and held the appellant guilty and sentenced as noticed hereinabove. Aggrieved thereby, the appellant has filed the present appeal.

Heard Mr. Animesh Kumar Mishra, the learned Amicus Curiae and Mr. Satya Narain Prasad, learned A.P.P. appearing for the State

Before we proceed to consider the rival submissions made by the parties, it is advisable to notice the evidence led on behalf of the prosecution. P.W. 4 Jaimala Devi in her statement has supported the version which she made in the fardbeyan. We do not find anything from her cross-examination to discredit her evidence. In so much so, no suggestion was given to her by the defence in order to discredit her evidence. Similarly, the victim (P.W. 3) in her deposition gave out the vivid picture of the place, time, date and manner of occurrence. She has stated that on the relevant date and time, she was at the maize field to keep watch over the crop and finding her alone, the appellant, armed with *dabiya*, forced her to go



inside the maize field and after unfolding her undergarment, she was raped which caused bleeding from her private part. The appellant thereafter escaped. We have gone through her cross-examination made by the accused. Nothing tangible appears to have been elicited from her in order to shake her testimony. P.W. 1 Jai Krishna Mandal is the Mukhiya of the village who has supported the prosecution case as a hearsay witness. Similarly, P.W. 2 Kailash Mandal who is *Nana* of the victim has fully supported the prosecution case. It has been stated by him that while the victim was keeping watch of the maize crop, she was subjected to sexual assault by the appellant. When he enquired from her, she disclosed the name of the appellant as the perpetrator of the crime. He even noticed the blood stained undergarments of the victim. From his cross-examination, this Court is unable to find any material which discredits his evidence. The I.O. of the case has been examined as P.W. 6. He has narrated the entire steps he took after recording of the fardbeyan. It has come in his deposition that he went to the place of occurrence soon after the recording of the fardbeyan and noticed trampling of the crop. He recorded statement of all the witnesses including the victim and seized her blood stained undergarments at the house of the informant. She was dispatched under custody of a lady constable for medical examination and after receipt of the injury-cum-medical report, the



charge-sheet was led. P.W. 7 is a formal witness who has proved the signature of the Judicial Magistrate on the statement of the victim girl which appears to have been recorded in course of investigation by the Judicial Magistrate, 1st Class, Madhepura. P.W. 5 is Dr. Nutan Verma who examined the victim of her injuries and has proved the injury-cum-medical report (Ext.1). In her deposition, she has stated that on 2.5.2005, on the requisition of the Officer-in-charge of Phulaut O.P., she examined the victim Alkhi Kumari and found external injuries on her body. Blood stain was found present on both thighs. The hymen was torn and ruptured. Both labia majora were inflamed and swollen. Blood mixed swab from deep vagina was taken which smelled like semen. On such clinical examinations, the doctor opined that sign of penetration was clearly visible inside the vagina which crossed the hymen. It was a clear case of rape. The age of the victim estimated by her was about 10 years.

The learned Amicus Curiae submitted that this is a case wherein no independent witness has been examined to prove the charges. Similarly, there is no eye witness to the occurrence, save and except, the victim girl herself. She appears to be a tutored witness. There are discrepancies in the evidence of the victim when she narrates about her mental condition, when she was brought at the house of her *Nana* and thereafter to the Police Outpost. The

Investigating Officer did not find any blood stain on and around the place of occurrence. The Court recorded the statement of the girl without recording its satisfaction about the understanding of the witness who was 10-11 years old.

Per contra, Mr. Satya Narayan Prasad, learned APP submitted that in a case like this, the statement of the victim is of utmost importance. If her deposition is found truthful, then no corroboration is even required. The status of the victim is not that of an accomplice and, as such, corroboration of her evidence would not be a sine qua non for recording conviction. He has relied in this regard *2007 (1) P.L.J.R. 188 (SC) (State of Kerala vs. Kurissum Moottil Antony)* which in turn has been relied on *(2006) 9 SCC 787 (Om Prakash vs. State of U.P.)*. Nothing has been brought by way of cross-examination of the material witnesses to demonstrate that there was any motive or animosity under which the victim girl named the appellant as the person who committed assault on her. She is, therefore, a truthful witness and has supported the prosecution case even in Court. Non-recording of the satisfaction of the Court about the understanding is a procedural irregularity which will not vitiate her evidence. The Court found her a child of understanding and, therefore, did not specifically record its satisfaction before allowing her to depose.



We have considered the rival submissions of the parties. As noticed above, the victim girl and the prosecutrix (P.W. 4) have fully supported the prosecution case. Above all, the evidence of the doctor leaves no doubt in our mind that the girl, on the relevant date and time as alleged by the prosecution, was subjected to sexual assault at the hands of the appellant. We have carefully gone through the cross-examination of the witnesses, particularly, P.W. 3 Alkhi Kumari, P.W. 4 Jaimala Devi (the informant) and P.W. 5 Dr. Nutan Verma (the doctor) who medically examined the victim girl and do not find any material worth referable to discredit their evidence.

In *(2006) 9 SCC 787*, the Apex Court noted as under in paragraph 15:

“15. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act, 1872 (in short “the Evidence Act”) similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look



for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. This position was highlighted in *State of Maharashtra v. Chandraprakash Kewalchand Jail.* ”

We find the victim truthful in narrating the incident. The evidence of doctor (P.W. 5) and the mother (P.W. 4) have given full credence to the case. The submission of the learned Amicus Curiae that no independent witness has taken the dock to support the prosecution case and that there is no eye witness to the occurrence, in our view, are fit to be noticed only to be rejected. In a case of rape, it is generally not expected to have been committed in presence of a witness. No corroboration by independent evidence in such case is required or insisted. If the victim has supported the prosecution case and there is nothing to demonstrate that the same was motivated owing to previous animosity, then non-examination of independent witness will be of no consequence.

In view of our discussions made hereinabove, we find no infirmity in the judgment under challenge. There is no merit in the

appeal. It is dismissed. The appellant is said to be in jail custody. He will serve the remaining period of sentence as directed by the Trial Court.

(Samarendra Pratap Singh, J)

(Kishore Kumar Mandal, J)

Pankaj/-
Patna High Court
AFR/NAFR

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