

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No. 570 of 2014

Against the judgment of conviction dated 12.09.2014 and order of sentence dated 15.09.2014 passed by Sri Janardan Tripathi, the learned Ad hoc Additional District & Sessions Judge-IV, Bhagalpur in Sessions Trial No. 531 of 2007 arising out of Sultanganj P.S. Case No. 77 of 2006

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Santosh Rai @ Santosh Ray, Son of Sri Gorelal Rai, Resident of Village - Kathara,
P.S. - Sultanganj, District - Bhagalpur

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Akau Kumar Jha, Advocate

For the Respondent : Mr. S. A. Ahmad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 30-11-2015

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

2. The appellant has been convicted under Section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.3,000/- and in default of payment of fine to undergo simple imprisonment for three years.

3. The prosecution case, as alleged in the written report by the informant Geeta Devi, is that her husband is the constable posted outside the district of her residence Sultanganj (Bhagalpur). It is alleged that in the night of 23.05.2006, due to excessive heat, her daughter Sinku Kumari, aged about 14 years, was sleeping on the Varandah of house. Her co-villager Santosh Rai, son of Gore Lal Rai and Gore Lal Rai kidnapped her daughter at 12:00 O'clock in the mid-night. Her

daughter had worn a chain of 20 grams and a golden ring. On 24.05.2006 at about 7:00 O'clock in the morning Santosh Rai telephoned the informant to give Rs.1,00,000/- otherwise her daughter would be killed. It is further alleged by the informant that Nand Kumar Yadav, Puneet Lal Yadav and Sanjeev Kumar had seen the occurrence while her daughter was being kidnapped/taken by the accused persons.

In the morning, her Bhaisur Nand Kumar Yadav and Pankaj Yadav reached village Koriyan, the village of the brother-in-law of Santosh Rai. The villagers of Koriyan village disclosed that Santosh Rai, who is brother-in-law, was seen with a girl aged about 14 years in the morning coming at Koriyan and had stayed at village in the house of his sister, but before reaching of Nand Kumar Yadav, the Bhainsur of the informant and Pankaj Yadav, the maternal uncle of Sinku Kumari and the sister of the appellant Suiya Devi ousted Santosh Rai and Sinku Kumari and Suiya Devi refused to furnish the address. Hence, on the basis of the aforesaid fact informant suspected the hand of the sister of the appellant in the alleged offence.

4. On the basis of the written report of the informant, First Information Report was lodged and investigation proceeded. During investigation, the victim along with the appellant was recovered from Ranchi. Thereafter the statement of the victim was recorded under Section 164 of the Cr.P.C. in which she disclosed about rape. The Investigating Officer, after recording the statement, concluded the

investigation and filed charge-sheet against the appellant. After submission of the charge-sheet for the offences punishable under Sections 366A and 376 of the Indian Penal Code, cognizance was taken, case committed to the Court of Sessions and after framing of the charge, the trial proceeded. During trial 11 witnesses were examined by the prosecution.

5. P.W.1 is Shinku Kumari, the victim herself, P.W.2 is Uday Rai, the father of the victim, P.W.3 is Mantu Yadav, P.W.4 is Pankaj Kumar Yadav, P.W.5 is Geeta Devi, the mother of the victim, P.W.6 is Punit Lal Yadav, P.W.7 is Smt. Sushila Chaudhary who examined the victim, P.W.8 is Jai Nanda Yadav, the second Investigating Officer of this case, P.W.9 is Ram Naresh Singh, Assistant Sub-Inspector of Police, a formal witness, P.W.10 is Punit Lal Yadav, an Advocate who has formally proved the written report, a formal witness and P.W.11 is Bhagwat Paswan, Chaukidar of Sultanganj Police Station and a formal witness. Defence has also adduced one witness as D.W. 1 Dharani Rai who has come to depose that the mother of Shinku Kumari wanted to get marry of the victim with the appellant since he was not ready to marry as his family members were protesting and Sinku Kumari used to write letter.

6. The defence of the appellant is that this is a case of love affairs. The victim was in love with the appellant and she went out of her own sweet-will with the appellant and this case has been instituted

by pressurizing the victim by her parents and further the medical evidence does not support the rape to record conviction.

7. The trial Court taking into consideration the evidence of the witnesses adduced by the prosecution and the defence, convicted the appellant as mentioned above in view of the evidence of the victim supporting the rape and the trial Court did not find any reason to disbelieve her evidence/testimony to record a finding of conviction.

8. Learned counsel for the appellant has challenged the judgment of conviction and order of sentence recorded by the trial Court on the ground that the medical evidence does not support the case of the prosecution. It has further been contended that the case has been instituted under Sections 366A and 120B/34 of the Indian Penal Code but the charge has been framed under Sections 366A and 376 of the Indian Penal Code and the appellant has only been convicted under Section 376 of the Indian Penal Code but acquitted under Section 366A of the Indian Penal Code.

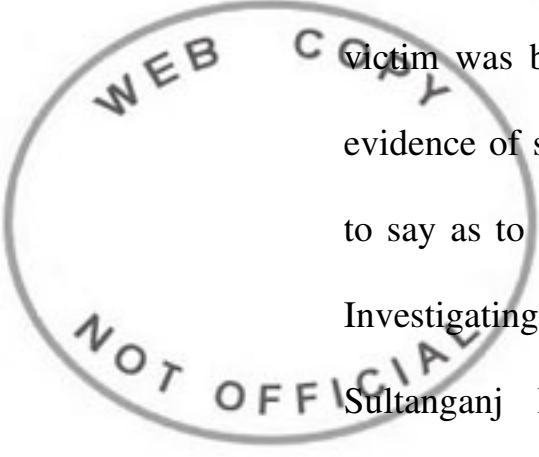
9. Learned counsel for the State, however, contended that the victim has been recovered along with the appellant from Ranchi and she has supported the prosecution case that she was kept at Ranchi and the appellant used to rape her constantly and hence, if the evidence of the victim is found to be reliable and trustworthy, then no corroboration is required to record conviction.

10. Having regard to the respective submission of the parties,

the question for consideration is whether the prosecution has been able to prove the charges beyond reasonable doubt.

11. However, the prosecution case, as alleged in the First Information Report by the informant Geeta Devi, the mother of the victim, is that while the victim was sleeping in the night at the Varandah on 23.05.2006, the appellant and his father Gorelal Rai came and kidnapped the daughter of the informant. The victim was seen by Nand Kumar Yadav, Puneet Lal Yadav and Sanjeev Kumar being taken away by the accused persons. However, Nand Kumar Yadav and Sanjeev Kumar have not been examined by the prosecution.

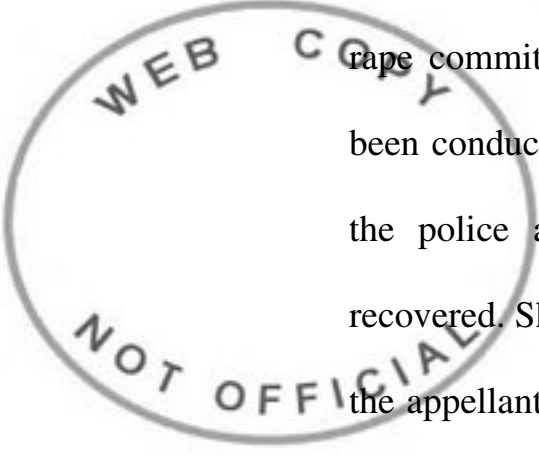
12. P.W.5 Geeta Devi is the informant. She deposed that the accused persons kidnapped her daughter and demanded Rs.1,00,000/- and thereafter her daughter was recovered from Ranchi. P.W.2 is the father of the victim and has deposed that he learnt about the kidnapping by phone. P.W.3 is the brother of the informant and learnt about the kidnapping from his sister. P.W.4 is also brother of the informant and has deposed that he also learnt about the kidnapping from his sister on phone. P.W.6 has deposed that he learnt in the morning about the kidnapping of the victim. P.W.7 is the Medical Officer who examined the victim girl on 03.06.2006 on the order of Dr. B. K. Jaiswal and found that there is no injury on face, abdomen and private part. Two shield vaginal swab sent to J.N.M.C.H. for detection of spermatozoa. She send the victim to X'ray department of J.N.M.C.H. for X'ray of



wrist an elbow and hip joint and according to her L.M.P. was 27.05.2006 and on the basis of the report she opined that the age of the victim was below 18 years and she has also opined that there is no evidence of sexual intercourse. She also opined that it is very difficult to say as to whether rape was committed or not. P.W.8 is the second Investigating Officer of this case and has deposed that he was posted at Sultanganj Police Station as Assistant Sub-Inspector and has investigated Sultanganj P.S. Case No. 77 of 2006 and prior to him the Investigating Officer was one Chhote Lal Manjhi, who had submitted the charge-sheet under Sections 366A and 376 of the Indian Penal Code. However, Chhote Lal Manjhi has not been examined. P.W.9 is Assistant Sub-Inspector of Police and has deposed that Chhote Lal Manjhi has died. P.W.10 has proved the writing on the written report marked as Ext. 3. P.W.11 is Chaukidar of Sultanganj Police Station and has deposed that he along with one Chaukidar Chandan Paswan went and caught hold of a boy and a girl and brought them from Ranchi to Sultanganj Police Station. However, from the evidence of these witnesses P.Ws.2, 3, 4, 5 and 6 though have deposed to the effect that the victim was kidnapped by the accused persons but none of them are eye-witnesses to the occurrence and their evidences are only that they learnt from others but fairly came to depose that they saw the victim to be fleeing away with the appellant.

13. P.W.1 is the victim herself and she deposed that the

occurrence is of 23.05.2006 and in the night of the occurrence she was sleeping in the Varandah and at 12:00 O'clock in the mid-night the appellant and Jai Jai Rai tied her mouth with Gamcha and took her on the road. From the road Gorelal Rai, the father of the appellant and the two took her to Sultangaj. Jai jai Rai and Gorelal Rai remained in the way and the appellant took her to Gangapur village. There the victim was kept in the house of Pappu Sah, driver and from there in the next morning took her to Koriyan village in the house of his sister Suiya Devi and from there he took her to Kharagpur at the house of his Fufa. She further stated that the appellant used to frighten and threaten her to kill and on inquiry from the nearby people used to identify her as his sister. He further took her to Bariyarpur and from there by threat he took her to Ranchi and then he took her to the house of his brother-in-law and got there a room. She has further stated that the name of the brother-in-law of the appellant is Kishore and the food was provided by him. She has further stated that a golden chain in her neck and a ring in her fingers were taken by the appellant and even she was asked to bring Rs.1,00,000/- from her father, otherwise, she would be killed. She has further stated that the appellant committed rape on her for about 6-7 days. She has further deposed that after 6-7 days the police reached there and caught hold and took them (the victim and the appellant) to Kotwali Police Station in Ranchi and thereafter Bhagalpur Police took them to Sultanganj Police Station and got her statement recorded which



has been marked as Ext.1 and hence, the witness has completely supported the prosecution case regarding the kidnapping as well as the rape committed upon her. However, elaborate cross-examination has been conducted. In cross-examination also she has stated that she said the police about rape and the police brought her after she was recovered. She has specifically stated that she did not write any letter to the appellant and that she had never written any letter to any boy. She has further stated that she has not established any physical relationship with any boy. She has further stated that she did state before the police that the appellant has committed rape and she has denied the suggestion. It is a fact that occurrence as alleged occurred and she has not written any letter to the appellant and has denied the suggestion.

14. P.W.1 the victim has supported the prosecution case and has specifically and categorically stated about the rape by the appellant for 6-7 days and in the lengthy entire cross-examination there is nothing to disbelieve the evidence of the witnesses.

15. A defence has been set up that the victim was a consenting party and there was love-affair with the victim and she went at her own sweet-will and the victim used to write letters. However, the defence case as set up is contrary to the evidence of the witnesses, and except the suggestion, there is no evidence that any letter was written by the victim. The defence has not been able to prove writing of letters by the victim nor produce any letter written by the victim. Though there is

suggestion that she used to pressurize the appellant for marriage but no evidence has been adduced, except the evidence of D.W.1. However, D.W.1 is the brother of the victim and has stated that he used to go to Delhi for work. However, the evidence of this defence witness is of no avail in view of the evidence of P.W.1 as she has supported the prosecution case in material particular and there is nothing in the cross-examination to disbelieve the testimony.

16. Learned counsel for the appellant, however, could not be able to point out anything in the cross-examination but contended to disbelieve the evidence of the victim in examination-in-chief. However, the victim has particularly supported the evidence made in the examination-in-chief and hence, the evidence of the victim P.W.1 Sinku Kumari was found to be reliable, trustworthy and worthy of confidence.

17. The argument advanced by the learned counsel for the appellant is that the evidence of the doctor has not supported the prosecution case as the doctor has not found any sign of rape. It has further been contended that there is neither spermatozoa found nor is there any evidence to corroborate the rape. However, the occurrence took place on 23.05.2006 and the victim was examined on 03.06.2006. The medical examination having been conducted on 03.06.2006, the possibility of presence and finding out of the spermatozoa is ruled out after such time. However, it has been stated that the victim was allegedly raped continuously but the doctor has not found any sign of

rape. Though the evidence of the doctor is very cryptic and the report of the doctor marked as Ext. 2/1 is also cryptic but nothing has been given in the report, except that there is no injury on face. However, there is no probability of having any injury found as there is no injury having been inflicted on her face. The doctor has not made any elaborate examination and there is no mention about the nature of injury on the private part or whether it was ruptured or whether it was recent or old. Moreover, the Doctor has not ruled out the rape rather opined that it is very difficult to say whether rape was committed or not. However, when the victim has supported the prosecution case about the rape and there is nothing in her evidence to disbelieve the same and her evidence does not suffer from any infirmity then reliance can be placed on her evidence even if there is no corroboration of her evidence.

18. Hence, I find no merit to interfere with the judgment of conviction dated 12.09.2014 and order of sentence dated 15.09.2014 passed by Sri Janardan Tripathi, the learned Ad hoc Additional District & Sessions Judge-IV, Bhagalpur in Sessions Trial No. 531 of 2007 arising out of Sultanganj P.S. Case No. 77 of 2006 and the appeal is dismissed.

(Gopal Prasad, J)

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