

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.924 of 2012

Against the judgment of conviction dated 05.10.2012 and order of sentence dated 08.10.2012 passed by Shri Vijay Kumar Sinha, learned Additional District & Sessions Judge, 1st, Naugachia, in Sessions Trial No. 249 of 2011 (arising out of Bihpur P.S. Case No. 409 of 2010 corresponding to G.R. No. 1290 of 2010).

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Deepak Kumar Rajak, Son of Shri Kanik Lal Rajak, resident of Jamalpur, P.S.Bihpur (Jhandapur O.P.) District-Bhagalpur.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Amrit Abhijit, Advocate.
Mr. Manoj Kumar Gupta, Advocate.
Mr. Sunil Kumar Pandey, Advocate.
For the informant : Mr. Sunil Kumar Singh, Advocate.
For the State : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT

Date: 24-09-2015

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

2. This appeal arises out of the judgment of conviction dated 05.10.2012 and order of sentence dated 08.10.2012 passed by Shri Vijay Kumar Sinha, learned Additional District & Sessions Judge, 1st, Naugachia, in Sessions Trial No. 249 of 2011 (arising out of Bihpur P.S. Case No. 409 of 2010 corresponding to G.R. No. 1290 of 2010) by which the appellant had been convicted for offence under Section 376 of Indian Penal Code and sentenced to undergo rigorous

imprisonment for seven years and payment of fine of Rs.5,000/- out of which 75% shall be paid to the victim if realized. In default of payment of fine the convict shall have to undergo further simple imprisonment for three months.

3. The prosecution case, as alleged in the First Information Report by Parmanand Das, the informant P.W.9 father of the victim is that his daughter Hema Kumari aged about 14 years, a student of Jamalpur Middle School, went to school on 11.12.2010. After closing the school, she was asked by the Headmaster to lock the kitchen of that school at that time Deepak Kumar Rajak was present there. The said Deepak Kumar Rajak came inside the school and caught hold of hand of Hema Kumari and dragged her in the kitchen and under threat to kill untie her cloth and forcibly raped her. It is further alleged after commission of rape, the accused open the door and went on roof of the school and fled away. The daughter of the informant Hema Kumari came out of the room and weeping and disclosed about the occurrence to her parents.

4. A written report was filed by Parmanand Das with signature of Rabindra Kumar and thumb impression of the informant. After endorsement made on the said written report the same was forwarded to Bihpur P.S. by S.H.O. Jhandapur for lodging the case for offence under Section 376 of Indian Penal Code. The investigation



was handed over to Prabhakar Mishra, A.S.I. and a case was instituted bearing Bihpur P.S. Case No. 409 of 2010 for offence under Section 376 of Indian Penal Code. The police submitted charge sheet after taking statement of witnesses and inspecting the P.O., the victim was examined by the Doctor and her statement had also recorded under Section 164 Cr.P.C. After investigation, charge-sheet submitted, cognizance taken and case was committed to the Court of Sessions. After framing of the charge, altogether 13 witnesses were examined on behalf of the prosecution.

5. P.W. 1 Rajesh Ranjan, teacher of Jamalpur Middle School who had been declared hostile as on his deposition he stated that he does not see the accused. In similar point P.W. 2 Mahendra Das had also declared hostile as he had only stated in his deposition that he heard Deepak Kumar Rajak raped Hema Kumari, the victim. P.W. 3 Manoj Kumar who had also been declared hostile. P.W. 4 Renu Kumari, the teacher of the aforesaid school had also turned hostile as in her evidence has stated that she does not know about the occurrence. P.W. 5 Rambha Kumari, is also teacher of the said school and she had also declared hostile as she does not know anything about the occurrence. P.W. 6 Poonam Pratap Singh is also teacher of said school and she had also not supported the prosecution case. P.W. 7 Rabindra Kumar Das is uncle of the victim and supported the

prosecution case to the effect that after the occurrence, the victim reached at the house and disclosed about the occurrence and hence apparently this witness is not eye witness of the occurrence. P.W.8 Sanjay Das and this witness had also been declared hostile. P.W. 9 Parmanand Das, the informant of the case had supported the prosecution case and stated that on 11.12.2010 on Saturday, Hema Kumari came in the house from school and started weeping and disclosed that Deepak Kumar Rajak caught hold of her hand and dragged inside the kitchen and under threat forcibly committed rape upon her. He had further deposed that mother of the victim reached the P.O. but Deepak Kumar pushed the mother of the victim and fled away then she had taken the victim to the house. The informant filed a petition which was drafted by one Rabindra Kumar Das and after reading the same he had given his thumb impression and Rabindra Kumar Das had also made signature on the petition which had been marked as Exhibit-1. P.W.10 Baby Devi, the mother of the victim has deposed that her daughter was a student of Class VI in Jamalpur Middle School and accused Deepak Kumar raped her in the room of the school. She further stated that she went to search of her daughter and saw her own eyes the said occurrence and at that time and saw her daughter was in naked condition and accused pushed her and fled away. P.W.11 is the victim herself has stated that school had been

closed and Deepak Kumar asked her to lock the kitchen and when she went to lock the kitchen in the meantime Deepak Kumar dragged her in the kitchen and under threat to kill untie her cloth and committed rape upon her. She had further stated that accused gave a fist blow on her face which caused blood oozing out from her mouth. On hullah her father, mother and villagers came there and she was brought to Jhandapur O.P. where her father lodged the case . She made statement before the police and her statement under Section 164 Cr.P.C. was recorded before the Magistrate and has proved her signature which has been marked as Exhibit-2. She had further stated that Deepak Kumar Rajak used to close the kitchen and stated there was a kitchen in the school and said kitchen is on the ground floor and there is no two storied building and to the north of Rasui Ghar there was a boundary. P.W. 12 is Dr. Silpi Rani posted at Sadar Hospital, Bhagalpur and examined the victim on 12.12.2010 at 6.00 P.M. and found the following injuries:-

No external physical injury on exposed part.

Under garment blood stained was found.

Bleeding present on P/V examination.

Small laceration of vaginal skin and mucosa present posterity.

Two sealed vaginal swabs sent to Department of Pathology, J.L.N.M.C.H., Bhagalpur for detection of spermatozoa and also requested for urine test.

6. According to pathological report, no spermatozoa was found and urine test for pregnancy is negative. According to Radiological report, uterus normal size, empty, adnexa and POD-NAD and the age of the victim was assessed as 18 years, urine test for pregnancy is negative but small laceration of vaginal skin and mucosa present positively. So mark of injury present on private parts.

7. P.W. 13 Prabhakar Pd. Sinha, A.S.I, Jhandapur P.S. who conducted the investigation and has proved Exhibit-4 the Formal F.I.R. He inspected the place of occurrence and recorded the statement of the witnesses. He found one room of 15-20 feet long and 19-15 feet width and also two doors in the eastern side and four windows which were closed and he found one old carpet (dari) in the room.

8. The trial court taking into consideration the evidence of witnesses and submissions made by the parties convicted the appellant in view of the fact that prosecutrix had herself supported the prosecution case as well as her statement recorded under Section 164 Cr.P.C. as well as the medical evidence corroborates the injury on the person of the victim on her private part and under garment found stained with blood and small laceration of vaginal skin and mucosa present posterity. Further taking into consideration the evidence of the victim that there was kitchen is on the ground floor whereas the

evidence of the I.O. and other witnesses stated that occurrence took place in the kitchen at first floor, hence, there is contradiction in place of occurrence, the trial court convicted the appellant in view of the fact that victim herself supported the prosecution case and this part of evidence is also corroborated by the medical evidence.

9. Learned counsel for the appellant however challenged the order of conviction and sentence on the ground that age of victim was assessed about 18 years and there is possibility of consent and victim having been tutored by her mother. It has further been contended that occurrence alleged to be happened in the kitchen as per evidence of the victim and as per her evidence, the kitchen is in the ground floor, but the mother of the victim had pointed out that kitchen is in the first floor. It has further been asserted that I.O. inspected the kitchen in first floor but did not find any utensil or chullah in the room so prosecution has not been able to prove the place of occurrence.

10. Learned counsel for the State however contended that victim has supported the prosecution case about rape and mother of the victim had also supported the prosecution case and doctor found injury on private part of the victim.

11. Hence taking into consideration the respective submissions, the question for consideration whether prosecution has succeeds to prove the charges against the appellant. However, I proceed in the



light of the submissions made by the parties. It is apparent that victim had supported about commission of rape. However, from perusal of the evidence of the father of the victim (P.W.9), it is apparent that he was not eye witness to the occurrence and had got drafted written report on the basis of which F.I.R. lodged. The draft prepared by one Rabindra Kumar Das and Parmanand Das, the father of the victim who had given his L.T.I. on the said written report. Further the prosecution case as alleged that key was given to the victim to lock the kitchen and when she went to lock the kitchen then appellant caught hold of the victim and took her inside the kitchen and under threat, the appellant committed rape upon her. The informant P.W.9 in his cross-examination had specifically stated that while he was taking meal he learnt about the occurrence from his wife. However, P.W.11 is the victim herself supported the prosecution case and as per her evidence, it is apparent that after closing the school, Deepak Kumar Rajak asked her to lock the kitchen and when she went to lock the kitchen Deepak dragged her in the kitchen and threatened to kill her, thereafter, untie her cloth and raped her. She had also stated after the occurrence she was taken to Jhandapur O.P. and after lodging the case, she moved for recording her statement before the Magistrate and her statement was recorded before the Magistrate and had proved her signature on the statement recorded under Section 164 Cr.P.C. which



has been marked as Exhibit-2. Though, criticism has been raised that witnesses of this case have not come to support the prosecution case and there is no corroboration by any independent witnesses even school teachers have turned hostile and have not supported the prosecution case. However, during cross-examination, P.W.9 had specifically stated that victim had supported the prosecution case about the occurrence and mother of the victim P.W.10 had also supported the prosecution case. The doctor P.W.12 had also found injury on the person of the victim. However, criticism had been made that place of occurrence has not been established in view of the statement of victim that kitchen was situated in the ground floor. However, this evidence cannot be looked into in isolation but must be considered in entire conspectus of the facts and circumstances of the case. Further the I.O. P.W. 13 in his evidence has stated that he inspected the place of occurrence and kitchen was situated in upper floor of the school. Though, criticism has been made that in the said kitchen there is no utensil or chullah. But, it has come in evidence of the victim P.W.11 that food was made before half past twelve and teachers had taken food at about 1.30 P.M. and the utensils were kept in Almirah and when the key was given to her to close the kitchen at that time all the teachers had left the school and there was none else except some female student. Further as per her evidence in paragraph

6 where she had specifically stated that Deepak Kumar Rajak asked her to close the kitchen and at that time and there was no teacher present there except some female student. The appellant Deepak Kumar Rajak dragged her and pushed in the kitchen closed the door and committed rape upon her. However, this part of evidence has not been challenged by the prosecution. Further P.W. 13, I.O. in his evidence had given description of P.O. at first floor and mother of the victim P.W. 10 had also stated in her evidence that when she went to make out search of her daughter (the victim), she went to school and on search, she went to first floor of the school and she found that door was open and her daughter the victim was in naked condition and Deepak Kumar Rajak, the appellant pushed her and fled away. Further as per evidence of P.W. 10 the mother of the victim and P.W. 13 is I.O. The kitchen was found in first floor whereas as per evidence of P.W.11 the victim, the occurrence took place in the kitchen, though, in her cross-examination in paragraph 2 has stated that kitchen is in the ground floor and hence this isolated evidence of the victim in her cross-examination, whole prosecution cannot be brushed aside when there is specific evidence regarding P.O. by P.W. 10 Baby Devi that kitchen is first floor. Further fact that there is evidence that after washing the utensils the same was kept in another room so I.O. had not found any utensil in the kitchen. As per

evidence of I.O., the P.O. had been established in the kitchen which is on first floor and on this account of single isolated evidence, P.O. cannot be held to be rejected.

12. However, having regard to the fact that victim had supported the prosecution case about rape and rape has been corroborated by the medical evidence and there is nothing in the record to disbelieve the evidence, the medical report as well as the evidence of the doctor corroborated the prosecution story. So far the question of interested witness as argued by the learned defence counsel is concerned, it is settled principle of law that only on the ground of interested witness, the evidence of interested witnesses cannot be brushed aside. Hence prosecution has been able to prove the charges. Hence, I do not find to interfere with the order of conviction and sentence recorded by the trial court. Accordingly, order of conviction and sentence is sustained.

13. Thus the appeal is dismissed.

(Gopal Prasad, J)

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