

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.237 of 2007

Arising out of P.S.Case No.28 Year- 2006 Thana Noorsarai District- NALANDA (BIHARSHARIFF)
Against the judgment of conviction and order of sentence, dated 21.12.2006/27.12.2006, passed by
the Additional Sessions Judge, Fast Track Court, I, Nalanda at Biharsharif, in Sessions Trial No. 448
of 2006

=====

Ram Ganit Yadav, son of Sri Dev Nandan Gope, resident of village Kairi Milki,
P.S. Noorsarai, district Nalanda Appellant

Versus

The State of Bihar Respondent

=====

Appearance :

For the Appellant : M/S Sanjay Kumar & Sudhir Kumar Upadhaya,
Birendra Kumar, Advs.

For the Respondent : Shri Dilip Kumar Sinha, A.P.P.

=====

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 13-02-2015

The present appeal is directed against judgment of conviction dated 21.12.2006 and order of sentence dated 27.12.2006 passed by the learned Presiding Officer, Fast Track Court-I, Nalanda, in Sessions Trial No. 448 of 2006.

2. The appellant was tried after being indicted of committed offences under Sections 376 and 302 of the Indian Penal Code and was convicted of committing both the offences. He was directed to suffer rigorous imprisonment for ten years as also to pay a fine of Rs.10,000/- under Section 376 of the Indian Penal Code and in default of paying the fine the appellant was to suffer rigorous imprisonment for two year. He was, further, directed to suffer further rigorous imprisonment for life and

pay an amount of Rs.50,000/- as fine for committing offence under Section 302 of the Indian Penal Code and in the event of making default in paying the fine amount of Rs.50,000/- he was directed to suffer rigorous imprisonment for a further period of three years. The sentences were to run concurrently.

3. Four-year-old-daughter of P.W. 3 Ramdeo Gope @ Ramdeo Yadav was sleeping with him in his *Dalan*, which as per his own evidence in paragraph 9, was used both as a cattle shed as also a resting place. He woke up to attend the call of nature and when came back he found that the little child was not there on the bed. He awoke P.W. 2 Devendra Prasad, his brother, who was also sleeping there and both brothers started a search for the little girl. They found this appellant Ram Ganit Yadav coming, carrying the child in his arms and as soon as the appellant saw P.Ws. 1 and 3, he threw the child into a potato field and ran away from there. Villagers got out of their beds on the *hulla* raised by the two brothers P.Ws. 1 and 3 and they could not, in spite of an attempt, arrest the appellant, who succeeded in making good his escape. Lastly, P.W. 3 Ramdeo Gope @ Ramdeo Yadav dictated his report to P.W. 2 Devendra Prasad and Exhibit 1, the written report, was filed in the Police Station.

4. P.W. 6 Sub Inspector of Police Tribhuwan Upadhya, who was the Officer-in-Charge of Noorsarai Police Station in the district of Nalanda, drew up the first information report Exhibit 3 and himself took

up the investigation. He looked to the injuries of the little child, Anita Kumari, and sent her for medical examination by preparing injury report Exhibit 4 and went to the place of occurrence for inspecting it. He, thereafter, recorded the statements of the victim and the witnesses and after obtaining the medical examination report sent up the appellant for trial only for committing an offence under Section 376 of the Indian Penal Code.

5. What appears from the record is that the trial was over and the case was fixed for judgment. The deceased was reported dead and, as such, the charge under Section 302 of the Indian Penal Code was added up by an order passed on 18.09.2006 and the witnesses, like P.W. 1 Gurudeo Gope, and P.W. 2 Devendra Prasad, were recalled for further cross examination of the charge which was added up. Ultimately, the judgment of conviction was passed.

6. What appears from the reading of the evidence of P.Ws. 1 and 3, the two brothers, who happened to be the uncle and father respectively of Anita Kumari as also the very short, but, meaningful evidence of P.W. 3 Anita Kumari, the deceased, whose statement was recorded prior to her death that the evidence is two types. Anita Kumari, the victim had stated that it was this appellant who had committed rape upon her and had caused injury to her. In fact, the deceased was not very descriptive in her narration about the commission of the offence; she was

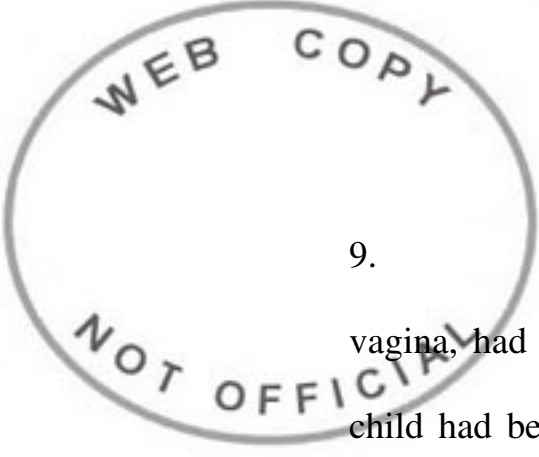
only pointing out to the appellant during the hearing of her evidence and was telling the Court that it was this appellant who had caused injury to her private part. But, how we construe that single line meaningful evidence is that the victim was pointing out to the Court that the injuries to her private part were on account of the act of rape committed by this appellant upon the little child.

7. The other part of the evidence comes from P.Ws. 1 and 3, who having found the little child not in the bed went out in search of her and during that course they found this appellant coming carrying the child in his arms and as soon as he saw the two brothers, he threw the victim into a potato field. When the two brothers looked to the little child they found, to their utter dismay, that she was unconscious and that she was bearing injury on her private part which was bleeding. The appellant at the same time ran away and made good his escape.

8. The victim was bearing injury which was found by Dr. Meena Prasad P.W. 5. The description of the injury given by her, more or less, runs as under :

P.W. 5 did not notice any bruise or abrasion over any part of her body except her private part and she found on internal examination that the uterus was too small to feel and the perineum valve, vagina and anus were injured, anus and vagina were in one way. Perineum-tear was continuous in between vagina and anus on account of the lacerated wound which was extended to mid vagina to the lower end of anus

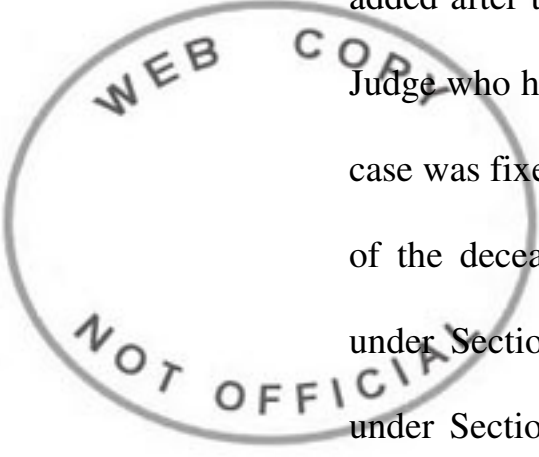
up to its front. The blood clot was present there and the laceration was found in the size of 1-1/2" x 1/4" x 1/4" and the injuries had been caused on account of some hard and blunt object.



9. Thus, what appears is that the two canals, i.e., anus and vagina, had been torn into one account of brutal act to which the little child had been subjected to. P.W. 5 Dr. Meena Prasad might not have said that she found evidence of commission of rape, while she was giving her opinion but stated that commission of rape might not be ruled out. We after considering the facts of the case coming on record through the evidence of witnesses do not have any doubt that the savagery the little child was subjected to, could only have caused the destruction of such private parts as were noticed by Dr. Meena Prasad, P.W. 5. The evidence of P.Ws. 1 and 3 when viewed in the light of the evidence of the victim P.W. 4 Anita Kumari, leaves no manner of doubt that it was this appellant who had picked her up to subject her to his savage sexual desire.

10. Thus, we do not have any reason to reject the evidence of the prosecution as regards the commission of rape upon the victim. As such we uphold the conviction of the appellant under Section 376 of the Indian Penal Code. We do not find any reason to disturb the sentence which was awarded to the appellant.

11. The appellant has been held guilty also for committing



offence under Section 302 of the Indian Penal Code. The charge was added after the death of the deceased on 21.08.2006 and the learned trial Judge who had taken up the trial, has noted in the judgment that when the case was fixed for delivering the judgment the information about the death of the deceased came to the Court necessitated addition of the charge under Section 302 of the Indian Penal Code. Accordingly, the charge under Section 302 of the Indian Penal Code was added up as we have noted on 18.09.2006. The witnesses were recalled by the prosecution and they were re-examined and cross examined on the factum of death and it's circumstances. P.Ws. 1 and 3 were recalled and they were re-examined and were cross examined. The Doctor who held the post mortem examination, i.e., P.W. 7, Dr. Janardan Prasad Sinha was produced for further evidence and as per his evidence the cause of death of the victim was the old injury of rectum and vagina with perennial tear followed by major surgery, i.e., cholostomy which had caused massive infection over the operated wound leading to septicemia and death of the deceased. The deceased had died after almost over five months of the incident and she had survived to depose in Court also. The injuries were really serious which were caused by the appellant on account of having raped her. But, that does not appear the real reason of her death. Reasons were multiple. It could be the infection which had arisen out of the injuries which were initially caused to the victim or it might be the surgical intervention to

repair the injuries and to further, the poor follow-up medical treatment leading to the infection to an extent of causing septicemia to the victim. But, at any rate we can not absolve the appellant of the responsibility of causing the injury initially and we also can not absolve him of the knowledge regarding the consequences of the act, he had perpetrated upon the victim. He being a prudent man of 22 years on the day of occurrence must be knowing the consequence of his act which he had perpetrated upon a little child of four years.

12. As such, we after attributing that knowledge to him regarding the certainty of consequence which might follow out of the act committed by him held him guilty of committing offence under Section 304 part II of the Indian Penal Code. As regards the sentence warranted to be inflicted after conversion of the conviction of the appellant from Section 302 of the Indian Penal Code to Section 304 part II of the Indian Penal Code, in our opinion rigorous imprisonment for a period of ten years may be sufficient in the ends of justice. But, we do not disturb the sentence of fine which was imposed by the learned trial Judge. The appellant shall pay up the amount of Rs.50,000/- which was imposed upon him as fine or else shall serve the period which was directed to be undergone by him, i.e., rigorous imprisonment for three years in lieu thereof. In case the appellant deposits the sum of fine the same shall be paid to the informant of the case as compensation under Section 357 of the Criminal Procedure Code.

13. The appeal is dismissed with the above modification in the orders of conviction and sentence passed upon the appellant.

(Dharnidhar Jha, J.)

(Gopal Prasad, J.)

N.A.F.R.
SA-Kundan

U	U	T	T
---	---	---	---