

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.199 of 2011

Arising Out of PS.Case No. -58Year- 2009 Thana –Brahmpur District- BUXAR

=====

Brajesh Kumar Singh @ Dabloo Singh, son of Surendra Singh, resident of village-
Raghunathpur, P.S.- Brahmpur, District- Buxar.

The State of Bihar

Versus

.... Appellant/s

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Jagdish Prasad, Adv.

Mr. Anirudh Mishra, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-07-2015

This appeal is directed against the judgment dated 14th December, 2010 and the order dated 15th December, 2010 passed by the learned Additional Sessions Judge, FTC-III, Buxar in Sessions Trial No.167 of 2009/ 53 of 2009, by which the learned Judge has convicted the appellant under section 376 of the Indian Penal Code (for short ‘IPC’) and sentenced him to undergo R.I. for ten years and to pay a fine of Rs.10,000/- and in default thereof to undergo simple imprisonment for a further period of six months.

2. The First Information Report (for short ‘FIR’) of the said case is based on the written report of one Om Prakash Prasad submitted on 20th March, 2009 to the Officer-in-Charge, Brahmpur



Police Station. In the FIR, he has stated that his brother-in-law Rajendra Prasad is the resident of Rajendra Nagar, Patna and works as a labourer for his livelihood. His sister Meena Devi had come to his house along with her minor daughter and they were living with him at village Raghunathpur, P.S.- Brahmpur, District- Buxar since last one month. On 18th March, 2009 at 6.00 p.m. his niece R.K. (name changed), who was aged about three and a half years and was playing at the main gate of his house, was taken away by the appellant Brajesh Kumar Singh. His sister Meena Devi stopped Brajesh Kumar Singh from taking away her minor daughter but he ran away with the girl. The appellant was also resident of village Raghunathpur. After a long time when the appellant did not return with the girl, the family members went in search for them. They found the girl near the bridge on the river. She was crying and was in a very bad condition. She was brought back in the house where it was found that her private parts were bleeding. Her pant was drenched with blood. It has been stated that there was some delay caused in filing the FIR as the brother of the informant was not well and the informant had gone to Patna for his treatment. There was no other person present in the house. It is further stated that the delay was also caused due to the reason that the accused is a muscleman and because of his fear the mater could not be reported to the police immediately

after the occurrence.

3. On the basis of the aforesaid information, Brahmpur P.S.Case No. 58 of 2009 was registered on 20th March, 2009 under section 376 IPC against the appellant and investigation was taken up. On completion of investigation, the Investigating Officer of the case submitted charge sheet against the appellant under section 376 IPC.

4. After receipt of the police report, the court of Magistrate took cognizance of the offence and committed the case to the court of Sessions for trial. On 4th June, 2009 charge was framed under section 376 IPC against the appellant and the trial commenced.

5. In course of trial, the prosecution has examined altogether 8 witnesses. They are P.W.1 Meena Devi, mother of the victim, P.W.2 Sanjay Singh, an independent witness, P.W.3 Sumeshwar Prasad, maternal grand father of the victim, P.W.4 Om Prakash Prasad, the informant of the case, P.W.5 Dr. Namita Singh, one of the doctors of the Medical Board which examined the victim and issued medical report, P.W.6 R.K., the victim of the case, P.W.7 Shyam Bihari Rai, Sub Inspector of Police, who was entrusted with the investigation subsequently and P.W.8, the first Investigating Officer of the case.

6. On conclusion of the evidence led by the prosecution, the statement of the appellant was recorded under section 313 of the

Code of Criminal Procedure. In his statement, his defence is categorical denial of the entire allegation. He has stated that he has been falsely implicated in the case due to previous enmity.

7. The defence has also examined one Gopi Nath Prasad in order to show that there was previous enmity between one Narsadeshwar Singh and one Jhulan Singh. From the trend of cross-examination of the witnesses, it would appear that the plea of the defence was that since there was enmity between Narsadeshwar Singh and Jhulan Singh and the informant used to work as labourer in the field of Narsadeshwar Singh, a false case has been instituted against the appellant, as he happens to be the nephew of Jhulan Singh.

8. On the basis of the evidence adduced during trial and after hearing the arguments advanced on behalf of the accused and the State, the trial court convicted the appellant under section 376 IPC and sentenced him in the manner indicated hereinabove.

9. Mr. Jagdish Prasad, learned counsel for the appellant has contended that there is an unreasonable and unexplained delay in institution of the FIR. He has contended that the trial court has failed to appreciate the evidence adduced before it. According to him, apart from the victim there is no other witness to the alleged offence of rape. He has submitted that the victim has not alleged in her



deposition that she was subjected to rape. The entire case of the prosecution is based on the evidence of the informant and the mother of the victim. The assertion made by them cannot be said to be the version of the victim. He has further submitted that the place of occurrence where the actual occurrence had taken place has not been established as the Investigating Officer of the case has not taken pain to investigate the case on that point. He submitted that the medical evidence does not corroborate the prosecution case. No sperm either live or dead was found by the Medical Board on microscopic examination of the private parts of the victim girl. In view of the evidence adduced before the court, the trial court ought to have acquitted the accused instead of convicting him for the offence under section 376 IPC.

10. On the other hand, Mr. Sujit Kumar Singh, learned counsel for the State has submitted that the delay caused in institution of the FIR has properly been explained by the informant of the case in the FIR itself. The informant has categorically stated that since he was attending his ailing brother at Patna and the accused was a muscleman of the village, the matter could not be reported to the police immediately after the occurrence. He further contended that apart from the informant and the mother of the victim, the victim has also supported the prosecution case. According to him, looking to the



age of the victim, the assertions made by her before the court are quite natural. The victim had stated everything to her mother, who has been examined as P.W.1, and she has given a vivid description of the entire occurrence. He has submitted that the medical report fully corroborates the prosecution case. He has further submitted that apart from the informant, mother of the victim and the victim, P.W.2 Sanjay Singh, an independent witness has also corroborated the prosecution case.

11. I have heard respective counsel for the parties and carefully perused the record.

12. The only issue involved in the present case is whether the appellant Brajesh Kumar Singh is guilty of the offence punishable under section 376 IPC.

13. It would appear from the evidence adduced before the court that P.W.4 Om Prakash Prasad, the informant of the case reiterated the allegations made in the FIR in examination-in-chief. He has stated that his sister had come to his house with her minor daughter and they were living there for the last one month. On 18th March, 2009 his niece was playing near the main gate of the house. The appellant, who is native of the same village came and took away the girl even when his sister stopped him. As the appellant did not return with the girl, his sister was worried. She went together with



others to find the girl. They found the girl near the bridge on the river where she was crying and her private parts were bleeding. They brought her back home and when asked her what has happened with her, she told that the appellant had put his penis in her mouth and also in her private areas. He also stated that as he was not present on that day in the village and had gone to Patna so her sister was not able to complain to the police about the matter on that day. The defence cross-examined him but his evidence was not shaken. He has proved the written report, which has been marked as Ext.-1.

14. The mother of the victim Meena Devi was examined as P.W.1 during trial. In her deposition, she has stated that she came to her brother's house about a month ago and in due course on 18th March, 2009 her minor daughter aged three and a half years was playing near the main gate of their house. She further stated that the appellant, who was also a resident of the same village visited their house at around 6.00 p.m. and took away her daughter with an excuse of taking her out to feed her biscuit and make her play but he did not return till late night, so, they went to search them. The villagers told that they have not seen the appellant. Thereafter, the minor girl was found near the bridge on the river and she was crying. She has stated that her private parts were bleeding, her pant was drenched with blood. She stated that they were not able to take her to the Police

Station at that time because her brother was ill and even they were afraid of the appellant.

15. P.W.2 Sanjay Singh, an independent witness, has stated in his deposition that while he was sitting in his garden, at around 6.00 p.m. on 18th March, 2009, he saw the victim playing near the main gate of her house. At the same time, the appellant came and took her away by making an excuse that he will feed her biscuit. He has stated that when he did not return with the girl, the family members went in search for her and found her near the bridge on the river. The girl was found crying and her pant was drenched with blood.

16. P.W.3 Sumeshwar Prasad, the maternal grandfather of the victim has stated in his deposition that he saw the victim playing near the main gate and in the meanwhile the appellant took her away with an excuse. When the appellant did not return along with the victim girl, his daughter Meena Devi (P.W.1) started searching her. Since she could not find her, they all went in search of the child. When they reached near the bridge on the river, they found the girl crying and her clothes were drenched with blood. They brought the victim home and when they asked the little girl about what happened, she disclosed that the appellant has done something bad thing with her.

17. The victim was examined as P.W.6. In her deposition, she has stated that she was taken away by the appellant as he told her that he will make her play and feed her biscuits. She identified the appellant in the court. She was not able to specify further because of her age. She just told that the accused appellant did bad thing with her. She stated “मुदालय ने मेरे साथ गलत काम किया था।”

18. P.W.5 Dr. Namita Singh was one of the doctors of the Medical Board which examined the victim at 5.00 p.m. on 20th March, 2009. She has proved the medical report which has been marked as Ext.-2. The opinion of the Medical Board on examination of the victim was as under :-

“Height – 3 fit, Weight 11 kg, Teeth – Twenty.

Auxiliary and public hair not present. Breast not developed. No external bodily injury on face, chest, abdomen, back, buttock and thigh.

Private part examination – No injury of vulva and vaginal wall. More congested area on both side of vaginal orifice. Hymen torn. Not oozing blood.

Linear wound 1/6th x 1/10th on post to vaginal orifice oozing blood. Age of wound is within 24-48 hrs. Vaginal orifice admits tip of the little finger. Findings are further confirmed in day light on 21/3/09.

Vaginal swab report- given by Dr. Anil Kumar Singh, M.O. S.B.H. Buxar – No spermatozoa found either alive or dead on low and high power of microscopic examination. A few epithelial cells found.

X’ray report – Plate No. 3278 dt. 20/3/09 given by Dr. H.C. Hari D.S. SDN, Buxar.

X’ray right wrist joint A.P view shows appearance of epiphyses of distal end of radius.

X’ray right palm A.P. view shows appearance of proximal, middle and terminal phalanges epiphysis

but not appearance of carpal bone epiphysis from lunette bone of havel.

Age- On the basis of physical appearance and Radiological examination age of victim is 3-4½ yrs (Three to four and half years).

M.I. – 1. A til mark on upper part of back.

2. Birth mark (Lahsan) on upper part of right knee.

Opinion- Sign of sexual assault is present.”

19. In her deposition P.W.5 has stated that the whole report was written by her and it contained her signature. The defence cross-examined her. In cross-examination she has stated that the tip of the little finger was 1 cm x 1 cm.

20. From the evidence adduced by Dr. Namita Singh (P.W.5), it would appear that there were signs of sexual assault with the little girl.

21. P.W. 8 Raj Nath Singh is the first Investigating Officer of the case. He had recorded the statement of the witnesses and prepared production-cum-seizure list. He has proved his signature on the production-cum-seizure list, which has been marked as Ext.-6. From perusal of Ext.-6, it would appear that the blood stained pant of the victim was handed over by the informant to the Investigating Officer and accordingly a production-cum-seizure memo was prepared. In cross-examination, he has stated that on 20th March, 2009 he had entrusted the investigation to another police officer.

22. P.W.7 Shyam, Bihari Rai is the second Investigating



Officer. He has proved pagination made over the formal FIR, which has been marked as Ext.-4. He has also proved the signature of the first Investigating Officer on the production-cum-seizure memo, which has been marked as Ext.-5. He has stated that he had inspected the place of occurrence and after recording the statement of certain witnesses and receiving instruction from the previous officer submitted charge sheet in the case on 17th March, 2010. In cross-examination, he has stated that the first place of occurrence was the place from where the victim was taken away by the appellant and thereafter she was ravished and left at the place from where she was recovered. He admits that he could not locate the place where the victim was ravished.

23. Learned counsel for the appellant has laid a lot of stress on the fact that no semen was found on the private part of the victim by the medical board and thus it cannot be said that rape was committed upon her.

24. In the facts and circumstances of the case, it is seen that there is consistent evidence that the victim was taken away on the pretext of feeding biscuit and to make her play. The appellant did not return with the girl even after lapse of more than an hour. A search was made by the mother of the victim and other family members. The victim was found near the bridge on the river. She was crying at that

point of time. Her private parts were bleeding. Her pant was drenched with blood. The pant of the victim was handed over to the police and a proper production-cum-seizure memo was prepared. The Medical Board has found her hymen torn. There were other injuries also near her private parts.

25. In such background of the fact, if I look to the explanation given under section 375 IPC which defines rape, I find that penetration is sufficient to constitute the sexual intercourse necessary for the offence of rape. From the explanation to section 375 IPC, it is distinctly clear that the ingredients which are essential for proving a charge of rape are accomplishment of the act of penetration. To constitute the offence of rape neither Section 375 IPC nor the Explanation attached thereto require that there should necessarily be complete penetration of the penis into the private part of the victim/prosecutrix. In other words, to constitute the offence of rape it is not at all necessary that there should be complete penetration of the male organ with emission of semen and rupture of hymen. Even partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim would be quite enough for the purpose of constituting an offence of rape as defined under Sections 375 IPC



punishable under section 376 IPC. That being so it is quite possible to commit legally the offence of rape even without causing any injury to the genitals or leaving any seminal stains. The crucial word "penetrate" mentioned in section 375 IPC, according to Concise Oxford Dictionary means "find access into or through, pass through". In order to constitute rape, what section 375 IPC requires is medical evidence of penetration, and this may occur and the hymen may remain intact. However, in the present case it is found that hymen of the victim was found torn and signs of sexual assault were noticed by the doctors while examining the girl even after lapse of two days.

26. The next submission made by the learned counsel for the appellant is that there was undue delay in institution of the FIR. As discussed above, I am of the opinion that the delay caused in submitting the written report to the police has been properly explained by the informant as also by the mother of the victim.

27. So far as the contention of the learned counsel for the appellant that the deposition of the victim does not corroborate the allegations made by P.W.1 Meena Devi and P.W.4 Om Prakash Prasad is concerned, keeping in mind the age of the victim I am of the view that her statement is quite natural. Learned counsel for the State has rightly pointed out that the victim being a little girl confided her woes by explaining everything to her mother and her mother Meena

Devi (P.W.1) has given a vivid description of the manner in which the offence was committed. Apparently, the evidence shows that the appellant acted like a wolf being on the prowl for easy prey and raped the poor little girl aged about 3 and a half years.

28. Considering the evidence on record, I am of the opinion that the trial court has rightly convicted and sentenced the appellant for having committed the offence punishable under section 376 IPC.

29. Accordingly, the appeal is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

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