

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1190 of 2011

Against the judgment of conviction and order of sentence dated 13. 09. 2011 passed by Shri Nagendra Prasad Tripathi, Additional Sessions Judge, F.T.C.I, Purnea in Sessions Trial No. 309 of 2009/100 of 2010

Arising Out of PS.Case No. -0 Year- null Thana -null District- PURNIA

=====

1. Karelal Paswan, son of Paro Paswan Resident of Village- Gaiduha, P.S.- Rupauli, District- Purnea

.... Appellant.

Versus

1. The State of Bihar

.... Respondent.

=====

Appearance :

For the Appellant : None.

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

=====

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 08-01-2015

Gopal Prasad, J.

Heard.

1. This appeal is directed against the judgment of conviction and order of sentence dated 13. 09. 2011 passed by Shri Nagendra Prasad Tripathi, Additional Sessions Judge, F.T.C.I, Purnea in Sessions Trial No. 309 of 2009/100 of 2010 by which the appellant has been convicted for offence under Section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years along with fine of Rs.5,000/- and in default of payment of fine further sentenced simple imprisonment for six months.

2. The prosecution case as alleged in the written report by the informant Nirbudhia Devi that on 07. 02. 2009, her daughter,

namely, Kiran Kumari, aged about 9 years had gone for grazing she-goat to Diyara, Bahiyar. At about 3 P.M. her daughter, Kiran Kumari came in her Angan on weeping and limping then she saw blood oozing out from her thigh and blood was also found in the thigh and is limping on which he enquired about weeping then she disclosed that Kare Lal Paswan asked her to pluck maize leaf then she want to pluck leaf of maize plant in the field of Satya Narayan Singh at Bahiyar, Kare Lal Paswan was also followed her and caught her in the maize field and untie her pant she make cry then Kare Lal Paswan assaulted on her abdomen and closed her mouth by putting Gamchi thereafter raped her after untie her pant by which blood started oozing out from her private part and pant was besmear with blood. Thereafter, informant also untie pant of her daughter and saw blood oozing out from her private part. At that time husband of the informant was not present in the house and when her husband came to house then she along with her husband brought her daughter to the police station and filed written report. On the said written report and endorsement marked by S.H.O. for instituting a case for offence under Section 376 I.P.C. F.I.R. lodged on 07. 02. 2009 itself. After lodging the F.I.R., investigation proceeded and during investigation the victim was examined by Medical Officer and subsequently her statement was also recorded under Section 164 Cr.P.C. and police after investigation



submitted charge sheet, cognizance was taken and case committed to the court of sessions. The trial proceeded and during trial nine witnesses were examined by the prosecution as P.W. 1 Ram Narayan Sah, P.W.2 Vinod Kumar, P.W. 3 Rajesh Paswan, the brother of the victim, Kiran Kumari, P.W. 4. Kapildeo Paswan, father of the victim, P.W.5 Nirbudhia Devi, the mother of the victim, P.W. 6 Kiran Kumari, the victim, P.W. 7 Dr. Punam Prabha who examined the victim medically, P.W. 8 Surendra Prasad Singh, is I.O. and P.W. 9 Umesh Paswan, Advocate Clerk, who has formally proved the report of Dr. U. P. Pandey. Prosecution has also produced documentary evidence. Out of whom Exhibit- 1 is signature of Binod Kumar in the statement recorded under Section 164 of Cr.P.C., Exhibit-2 signature of the father of the alleged victim on the written report, Exhibit-2/1 is hand writing and signature of S.H.O. of Rupauli P.S., S. N. B. N. Singh regarding endorsement of First Information Report, Exhibit- 3 is Medical report of Kiran Kumarik, Exhibit-4 is Formal F.I.R. and Exhibit-5 is injury report issued by Dr. U. P. Pandey.

3. The trial court taking into consideration the evidence of witnesses convicted the appellant that all the witnesses have fully supported the prosecution case except P.W. 1 and 9, the age of the victim at the time of occurrence she was found to be ten years and she was minor at the time of occurrence and have fully supported the

prosecution case.

4. P.W. 2, 3, 4 and 5, though, are not eye witnesses to the occurrence, but their evidence are to the effect that they saw the victim just after the occurrence blood stain of the paint and blood oozing out from her private part. P.W. 7 is Doctor has also found redness on the upper part of perineal region and fresh rupture of hymen of the victim and vaginal bleeding at the time of examination. I.O. has also found objective materials at the place of occurrence. Hence the trial court held that prosecution has been able to prove the charges beyond all reasonable doubt and convicted the appellant sentenced as mentioned above.

5. No one appeared on behalf of the appellant. However, ground taken in the appeal that order is pre-judicial to the effect that prosecution case is full of doubt and victim has stated in her evidence that accused untie her pant and committed rape with her, but the accused could not been succeeded for committing rape and it has been asserted that doctor opined that there is no sign of rape. Further, P.W. 5 is not eye witness to the occurrence except other witnesses as well as order of conviction is not maintainable.

6. Learned counsel for the State submits that there is abundant evidence. The victim herself supported the prosecution case.

7. However, taking into consideration the evidence of the witnesses, it is apparent that P.W. 6 is victim and she was specifically stated in her evidence that she had been at Bahiyar for grazing she-goat and Kare Lal Paswan asked to her to come to pluck leaf of maize and he took her in the field of Satya Narayan Singh and untie her pant, but she tried to make hulla then he closed her mouth committed rape on her. Then came to her house on weeping and limping having blood oozing out from her private part and she disclosed about her occurrence to her mother and at that time husband of the informant was not present in the house. However, stress has been made with regard to her statement made in her cross-examination in paragraph where she stated that accused wanted to commit rape and she was not allowing him to do this act and then she made hullah then accused flee away. However, evidence of the Doctor in this connection is relevant where she stated that, though, no external injury found anywhere her body, but has subsequently mentioned that redness on upper part of perineal region and fresh rupture of hymen and vaginal bleeding seen hence evidence with regard to the effect that attempt was made by him of penetration and was found to be fresh rupture of hymen and redness of upper part of perineal region itself indicates that there was attempt for penetration.

8. However, it is well settled that to constitute an offence of

rape, it is not at all necessary that there should be complete penetration with male organ with emission of semen and rupture of hymen. However, even partial or slightest penetration of male organ in the perineal region or valva by penetration without any emission of semen and even attempt of penetration into private part of the victim would be act enough for the purpose of Section 375 or 376 of Indian Penal Code that being so it is quite possible to commit legally an offence of rape even without causing any injury to the genital or leaving semen as observed in decision reported in **1994(6) SCC page 29** and hence it is apparent that depth of penetration even an offence for offence under Section 376 of Indian Penal Code.

9. Hence having regard to the evidence that an attempt was made and injury suggests redness on the upper part of perineal region and fresh rupture itself sufficient to indicate that attempt whatever made was sufficient to constitute an offence under Section 376 of Indian Penal Code and hence oral evidence of the victim having been corroborated by medical evidence. It is sufficient to hold that act alleged constitute an offence. Further evidence of the victim has been corroborated by her evidence. Hence evidence of P.W. 5 who is mother of the victim stated that just after occurrence the victim reached the house limping and the blood oozing out from her private part and pant besmear with blood and victim disclosed about the

occurrence itself sufficient to show that there was corroboration of the evidence of the victim. Moreover, other witnesses have also been supported the prosecution case who are P.W. 2, 3 and 4 have corroborated about disclosure as well as deposition of the victim in her cross examination shall not any manner creates a doubt. Moreover, the victim is aged about ten years or twelve years and having her age less than 15 years. There is no defence either as the consent of the victim is available to the appellant and her age assessed as ten to twelve years as per radiological examination and her age in her evidence has been assessed as ten years as disclosed by the trial court.

10. Hence taking into consideration the entire evidence and circumstance and having gone through the entire record, I find and hold prosecution has been able to establish the charges beyond all reasonable doubt and I do not find to interfere with order of conviction and sentence recorded by the trial court. **Accordingly, the appeal is dismissed.**

(Gopal Prasad, J)

m.p.
NAFR

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