

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.212 of 2015

Against the judgment of conviction, dated 31.03.2015, and order of sentence, dated 06.04.2015, passed by Mr. Md. Shahid Rais, Additional Sessions Judge, I, Nalanda at Biharsharif, in Sessions Trial No. 584 of 2011 arising out of Bind P.S. Case No. 39 of 2011

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1. Arvind Kumar @ Arvind Raut Son of Radhey Raut, Resident of Village - Amawan, P.S. - Bind, District – Nalanda	 Appellant
Versus	
1. The State of Bihar	 Respondent

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Appearance :

For the Appellant : M/S Vikram Deo Singh & Manoj Kumar, Advs.

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

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 17-02-2016

Heard the learned counsel for the appellant and the State.

2. The sole appellant has been convicted under Section 376 of the Penal Code and sentenced to undergo rigorous imprisonment for ten years and a fine of Rs.10,000/- out of which Rs.5,000/- shall be given to the victim and in default of payment of fine he will further undergo rigorous imprisonment for three months.

3. The prosecution case as alleged in the first information report by the informant, Poonam Kumari, that she had been the place of his maternal uncle in the marriage of her sister and on 11th May, 2011, on Wednesday, in the evening, at about 07.00 P.M. along with his younger sister, Gayatri Kumari, aged ten years, went to meet the call of nature to the north of their house, there is a toddy tree. The, further, case is that at the same time, the appellant, Arvind Kumar, at once, appeared and caught hold of her, tied her mouth and hand and dragged her to the bridge and took her in a field. In the meantime, his sister, Gayatri Kumari, flee away making a cry towards house and, thereafter, Arvind Kumar thrown her on the ground and untied her salwar and raped her. The, further, case is that when she used to protest, Arvind used to assault her. The, further, case is that after committing rape, he went towards west of the village in orchard and then she came to house weeping and disclosed about the occurrence to her mother, Jitni Devi, P.W. 5, and aunt, Bimla Devi. The, further, case is that since her father had been to Sheikhpura in an invitation and, further in the house there was marriage of her maternal sister, Lalita, so she did not go to the Police Station at

that time and on coming of her father to the house, she came to the Police Station and given statement.

4. On the statement of the victim, the fardbeyan recorded by Amit Kumar Singh, Station House Officer, Bind Police Station, district Nalanda, on 13.11.2011 at 18.13 hours registered the first information report and investigation proceeded. However, during the investigation the victim was examined by the doctor, her statement was recorded under Section 164 of the Criminal Procedure Code and the police after completing the investigation and after recording the statements of the witnesses, submitted charge sheet, cognizance taken, case committed to the Court of sessions.

5. During the trial, after making the charge, under Section 376 of the Penal Code, six witnesses were examined by the prosecution case.

6. P.W. 1, Poonam Kumari, is the victim, P.W. 2 is Pramod Prasad, the father of the victim, P.W. 3 is Gatatri Kumari, the cousin sister of the victim, P.W. 4 is Kanti Devi, the aunt of the victim, P.W. 5 is Jitni Devi, the mother of the victim and P.W. 6 is Dr. Kum Kun Kumari. The documentary evidence proved in the case are Exhibit 1, the fardbeyan, Exhibit 2, the statement under Section 164 of the Criminal Procedure Code, Exhibit 3, the signature on the formal first information report and Exhibit 4 is the injury report of Poonam Kumari.

7. The trial Court, taking into consideration the evidence of the witnesses, convicted the appellant and sentenced as mentioned above.

8. The learned counsel for the appellant has challenged the order of conviction and sentence, recorded by the trial Court, on the ground that the evidence of the doctor is shaky and there is no clear cut evidence of rape. It has, further, been contended that there is delay in lodging the first information report and the delay, itself, appears not to have been explained in lodging the first information report and, further, neither the investigating officer has been examined nor the salwar of the victim has been produced or proved to have been stained with the human blood or semen and, further, there is no injury on the private part of the victim having been established.

9. The learned counsel for the State, however, contends that the evidence of the victim, itself, is sufficient to record the conviction as

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her evidence is intact. It has, further, been contended that there is corroboration of the evidence of the witnesses regarding the material particular and non-examination of the investigating officer has not caused any prejudice to the accused.

10. Hence, having regard to the fact, I proceed to consider the evidence of the witness.

11. P.W. 1 is the victim, herself, in her evidence, has supported the prosecution case in the first information report that she went along with P.W. 3, Gayatri Kumari, to meet the call of nature and there she was apprehended by the appellant, Arvind Raut, he caught hold of the victim and dragged her towards a bridge in the field and where she was raped by force and, then, after rape she came weeping. P.W. 3, Gayatri Kumari, who is said to have been following the informant to meet the call of nature. However, the informant was caught hold by Arvind Kumar and was dragged and this witness, Gayatri Kumari, has supported the prosecution case that when they were going to meet the call of nature, Arvind Kumar caught hold of the victim and she flee away towards her house to intimate the inmates of the house. Hence, she has stated that she intimated about the occurrence to her aunt. P.W. 4 is the aunt of the victim and she has stated that Gayatri Kumari came and disclosed her that Arvind Kumar caught hold of Poonam Kumari and took away. She has, further, stated that Poonam Kumari also came weeping and disclosed after two hours that Arvind has taken her to the north of the village and committed rape. A criticism has been made regarding the evidence of this witness in her cross-examination that P.W. 2 has stated that she came after two hours and in cross-examination she has stated that she asked Poonam Kumari where she was for two hours, however, the evidence is to the effect that when she came, then, she herself disclosed and the inmates of the house were making search of Poonam Kumari for two hours, the emphasis has been made in the evidence about search for two hours. This witness has, further, disclosed that on being chided, Poonam Kumari disclosed about the occurrence. However, the emphasis about the search for two hours, itself, can not be imagined in evidence "two hours" literally means "two hours" and the estimation of the time may have been speculation. However, the witnesses, P.Ws. 3 and 1, have supported the prosecution case on

material particular that she went to meet the call of nature where Arvind Kumar caught hold of the victim, Poonam Kumari, and dragged her in a field and P.W. 3 making hulla rushed to the house intimated P.W. 4 and, then, inmates of the house make out a search and Poonam Kumari returned weeping disclosing about the occurrence. P.W. 5, Jitni Devi, the mother of the victim, Poonam Kumari, stated that Poonam Kumari and Gayatri Kumari had gone to meet the call of nature where Arvind Kumar took the victim, Poonam Kumari, and victim disclosed about the occurrence. She has, further, stated that on that date her husband was at Sheikhpura, he was informed and he came in the night, then, matter reported. P.W. 2 is the father of the victim and has deposed that on the day of occurrence he had been to Sheikhpura and he was informed by his brother about the rape of his daughter and, then, he came and went to file the case and has proved his signature on the fardbeyan, marked as Exhibit 3.

12. Hence, going into the entire evidence the witnesses have supported the prosecution case and the evidence of P.W. 1 about rape has been corroborated by other witnesses, P.Ws. 2, 3, 4 and 5.

13. The criticism defence by the learned counsel for the appellant is the evidence of P.W. 6, the doctor that the victim was habitual. It has, further, been contended that there is no corroboration of the evidence of the doctor, however, doctor has proved the report, which has been marked Exhibit 4. However, the occurrence is of 11.05.2011. The doctor has examined the victim on 15.05.2011 and it is found only to the effect that breast developed, auxiliary hair present, pubic hair present, vagina admits two fingers easily, hymen old rupture and has opined in his opinion that she is habitual to sexual intercourse. Having regard to this fact, it is difficult to believe any sign of rape could have been found on the victim regarding the sexual intercourse. However, if it is asserted that there is allegation of rape, but, no injury has been found, the occurrence took place on 11.05.2011 and the victim examined on 15.05.2011, the doctor himself has not written any sign whether found or not. There is no mention that he examined the body of the victim or whether she has found any injury or not. However, for the laches on the part of the doctor, the prosecution or the defence should not suffer, more over, it has, further, been contended that the

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investigating officer has not been examined. It is true that the investigating officer has not been examined, but, after going through the evidence of the witnesses and the witnesses have supported the prosecution case and there is nothing in the evidence to disbelieve the testimony and in that background, non-examination of the investigating officer, who has not been brought to the notice that any breach has been caused, except that the witnesses stated that she produced the clothe, the salwar, besmeared with blood, but, the same has not been produced nor any chemical report with regard to that has been obtained. However, going to the entire records and coming to the evidence of the witnesses, the informant has supported the prosecution case and the statement of the victim has been recorded under Section 164 of the Criminal Procedure Code has also been proved, which has corroborated the prosecution case in material particular and the witnesses, P.Ws. 3, 4 and 5 have supported the prosecution case in material and particular, hence, there are sufficient evidence to hold that the prosecution has been able to prove the charges. Hence, I do not find any merit to interfere with the order of conviction, recorded by the trial Court.

14. The learned counsel for the appellant, however, contends that the appellant is of tender age on the date of occurrence as he was aged only 21 years, hence, a lenient view may be taken.

15. Having regard to the fact that the ends of justice shall meet by sentencing the appellant for eight years instead of ten years. However, the fine and the consequence for non-payment shall continue.

16. With the modification, this appeal is **dismissed**.

(Gopal Prasad, J)

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