

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.908 of 2011

[Against the Judgment of conviction dated 23rd of June 2011 and order of sentence dated 27.7.2011 passed by the Additional Sessions Judge, Fast Track Court No. III, Vaishali at Hajipur, in connection with Sessions Trial No. 115 of 2009 arising out of Rajapakar P.S. Case No. 154 of 2007]

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Akhilesh Kumar @ Akhilesh Rai @ Aklesh Kumar @ Aklesh Rai, son of Baubey Lal Rai, resident of village Gangajal Parti, P.S. Raja Pakar, Distt. Vaishali

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sheikh Arkan Ahmad, Adv.

For the State : Mr. S.N. Prasad, Additional PP,

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 25-05-2016

Heard learned counsel for the Appellant and learned counsel appearing on behalf of the Public Prosecutor.

2. Appellant Akhilesh Kumar @ Akhilesh Rai @ Aklesh kumar @ Aklesh Rai has been convicted for the offence punishable under Section 376 Indian Penal Code and sentenced to undergo life imprisonment with a fine of Rs.10,000/- by a Judgment of conviction dated 23rd of June 2011 and order of sentence dated 27.7.2011 passed by the Additional Sessions Judge, Fast Track Court No. III, Vaishali at Hajipur, in connection with Sessions Trial No. 115 of 2009 arising out of Rajapakar P.S. Case No. 154 of 2007.

3. The case of the Prosecution according to the Informant PW 1 (Sunita Devi) is that on 18.10.2007 at about 1:00

P.M., she had gone to look after the cattle, leaving alone her daughter who was aged about nine years, at home. In her absence the Appellant forcibly committed rape upon her on account of which she became unconscious. She learnt about this from her neighbours and when she ran, she saw the Appellant fleeing away and also the daughter injured. Cloth had been stuffed into the mouth of her daughter. She apprehended that her daughter would not survive and the motive for the occurrence was constant harassment by the family of the Appellant who were her close family members on account of pathway. The *fardbeyan* was recorded at Sadar Hospital on the same day at 5:45 P.M.

4. During Trial, the Prosecution examined 7 witnesses including the victim as PW 2.

5. Before we proceed to the case, we would like to clarify the evidence of the Doctor Neelam Kumari (PW 7) who proves the injury report Ext. 3 and found the following injuries on her person:

- “(i) *Bleeding profusely from vaginal region. On vaginal examination there was second degree vaginal laceration extended up to the cervix. Big blood clot present inside. All the tears were repaired under general anesthesia and vaginal swab taken for pathological examination.*
- ii) *Breast not developed,*
- iii) *No Pubic hair present*
She had minor laceration over left side of the face
- iv) *She is giving history of forceful rape by her cousin brother*
- v) *M/I - (i) One Til over right*

temporal area
(ii) *Scar mark over right knee joint”.*

We find from her evidence that at the earliest instance the victim had complained about sexual assault by her cousin brother.

6. PW 1 (Sunita Devi) the Informant reiterated in Court that on the date of occurrence, she had gone to see the cattle leaving her minor daughter aged about 9 years alone at home. When she returned, she learnt that her daughter had been raped by her own relative, i.e. the Appellant. Several persons came on *hulla* and took her to Hospital where she was being treated. She further stated that her husband used to ply a rickshaw outside the State and that her agnates used to harass them.

In cross examination, she stated that her child regained consciousness four days later and she had disclosed to her mother about the complicity of the Appellant. There is nothing else which is of note in her cross examination except that she was poor and her child used to collect fodder from the forest area.

7. PW 2 is the victim herself aged about 11 years on the date of deposition. She stated that on the date of occurrence, she was at home when the Appellant caught hold of her and fell down and committed rape and when she screamed, the Appellant put a cloth in her mouth due to which she became unconscious. Later, the mother of the Appellant came along with his sister and drove him away and told her not to disclose to anyone about the occurrence. She had stated that

she had bled from private parts on account of rape. She explained that the Appellant was her own cousin brother and there was some dispute over right of pathway between the families. She also stated that she was examined by the Police once she regained consciousness about 15 days later.

8. PW 3 (Pankaj Kumar) is the brother of the victim who stated that on the date of occurrence, in the afternoon, he suddenly heard that the Appellant committed rape upon her sister who had fainted. He then came and saw his sister unconscious.

In cross examination, he explained the relationship between the Appellant and their family and there is nothing else which is of note in his cross-examination.

9. PW 4 (Vinoy Ram) was the Officer-in-Charge of Rajapakar Police Station on 19.10.2007 and had instituted the First Information Report and had received the *Fardbeyan* which he proves as Ext. 1. He instituted the First information Report upon the same which he proves as Ext. 2. He appears to be a formal witness.

10. PW 5 (Krishna Kumar) was also a Police Officer posted at the same Police Station and took over the investigation on 20.11.2007 and submitted charge sheet. He also appears to be a formal witness.

11. PW 6 (Lalita Prasad Singh) was the Officer-in-Charge and has assumed investigation of the case on 18.10.2007 and examined the witnesses as also inspected the place of occurrence. He

stated that the victim had not returned from the Hospital and, therefore, he could not examine her. He, thereafter, submitted charge sheet.

In cross examination, some minor discrepancies in the evidence of Pankaj Kumar (PW 3) have been elicited which is of no consequence.

12. The learned counsel for the Appellant submits that the Investigating Officer did not find any blood at the place of occurrence and, therefore, the Prosecution case is fit to be rejected.

13. On the contrary, we find that there is direct evidence of PW 2 the victim herself, who has fully supported the factum of rape by the Appellant and serious injuries were found on her person by PW 7 (Dr. Neelam Kumari), therefore, these minor discrepancies or lapses do not hold good.

14. In the result, finding no merit in the appeal, the same is dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

S.Ali/-

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