

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.287 of 2014

Arising Out of PS.Case No. -82 Year- 2010 Thana -KOPA District- SARAN

Chhotu Singh S/o Ramashankar Singh, resident of village - Samhota, P.S. Kopa,
District - Saran at Chapra.

.... Appellant

Versus

The State of Bihar.

.... Respondent

Appearance :

For the Appellant : Mr. Dewendra Narayan Singh, Advocate

For the State : Mr. Binod Bihari Singh, Addl. P.P.

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 08-02-2016

1. Heard learned counsel for the appellant and the learned counsel for the State.

2. The appellant has been convicted under Section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.10,000/- and in default of payment of fine, the appellant is directed to further undergo simple imprisonment for two months.

3. Prosecution case has alleged in the written report by the informant Rani Kumari alleged to be the aged 13 years that on 27.12.2010 at about 8.00 A.M., she came out from her house to meet the call of nature and went to bamboo club of a co-villager Janak Singh. At the same time, a co-villager Chotu Singh, son of



Ramashankar Singh came suddenly and caught hold of her by force and threatened with spade in his hand and took her in the bamboo club and thrown her on ground. After the commission of the report, he threatened that if she will disclose the fact then she will be killed. The further case of the prosecution that blood oozed out from her private part and she anyhow manage to reach at her house and disclosed about the occurrence to her father and mother. Thereafter, she went to the police station along with her father and mother and giving the written report and also produced the cloths she had been wearing at the time of occurrence. On the written report of the victim, Rani Kumari, an F.I.R. was lodged at about 12.15 P.M. on the same day i.e. 27.12.2010. After lodging the first information report, the investigation proceeded. During investigation, further statement of informant was recorded and victim was examined by the doctor, injury and radiology report (Ext.5 and 5/1) prepared. A seizure list was prepared with regard to seizure of a panty, a cotton cloth of khaki coloured Shalwar and Shamiz of the victim. The same was sent for the F.S.L. report. The I.O. inspected the P.O. The P.O. is the bamboo club of Janak Singh and adjoining the mango orchard of Ramdeo Singh bearing in an area of 5-6 katha. The said bamboo club was a lonely place and in an around there is no house and in the north, there is mustered field of Kamla Singh and in south, there is orchard of mango



and in the east, the mustered field of accused Chotu Singh and Supan Singh. The west is also mustered field of Paras Singh. The I.O. reached the house of the accused but found him absconding. Thereafter, the statement of the victim under Section 164 Cr.P.C. was got recorded by Magistrate and after completing the investigation, the charge sheet was submitted. After submission of the charge sheet, cognizance was taken and the case was committed to the court of Sessions and thereafter, the charge framed for offence under Section 376 of the Indian Penal Code and during the trial eight witnesses were examined by the prosecution.

4. P.W.1 is Birendra Prasad and has deposed that Rani Kumari was weeping then he asked her the reason for the weeping then she disclosed about the rape by Chotu Singh. It was morning at 8 A.M., P.W.2 is Rabindar Prasad has come to depose that he saw Chotu Singh fleeing away from the bamboo club with spade to his Sarso field and Rani was weeping with blood oozing out from panty and she disclosed about the rape by Chotu Singh under threatened of spade then he brought her to her house.

5. P.W.3 is Krishna Prasad, the father of the victim Rani Kumari and has deposed about 8 A.M. he was irrigating his land then on information he went to his house and saw that Salwar and Samij of his daughter Rani Kumari is besmeared with blood and then on

enquiry, she disclosed about the occurrence of rape in the bamboo club of Janak Singh by Chotu Singh.

6. P.W.4 is Sundrawati Devi. She is the next door neighbour of the victim and has also supported the prosecution case that he also went to the house of Rani Kumari saw her and Rani Kumari disclosed regarding the rape.

7. P.W.5 is the victim Rani Kumar. She has supported the prosecution case about the rape by Chotu Singh and then he gave her written report and has proved his signature on written report marked as Ext.3 then she went to the Sadar Hospital, Chapra where she was treated. Her statement was recorded under Section 164 Cr.P.C. and has proved his signature on the statement under Section 164 Cr.P.C. recorded by Magistrate marked as Ext.4. and in the cross examination of this witness in several pages but there is nothing in her evidence to disbelieve her testimony and her evidence found liable to be trust worthy and worthy of confidence.

8. P.W.6 is Sona Devi, the mother of the victim and she has also deposed that his daughter Rani Kumari had gone to meet the call of nature in the bamboo club and her clothes were full of blood. Thereafter, this witness along with her husband and sister-in-law brought the victim to the police station where a case was lodged.

9. P.W.7 is the doctor who examined the victim on



27.12.2010 at 2.30 P.M. and found on examination of her private part that hymen is ruptured recently with profused bleeding and vagina was full of blood clot. He has further opined that there is a recent hymen ruptured but the pathological report shows no spermatozoa was found and hence it is not possible to say that the victim has been raped or not. He has further opined that the bleeding from tagged of the victim is due to recent injury of hymen ruptured so possibility of sexual intercourse cannot be denied and has proved injury report marked as Ext.5. He found that the age of the victim as 17-18 years.

10. P.W.8 is the I.O. He has deposed that got the victim examined by doctor and got her statement recorded under Section 164 Cr.P.C. the prepared seizure list with regard to the panty of the victim and sent the same to Forensic Science Laboratory and got the F.S.L. report. The Forensic Science Laboratory report marked as Ext.9 as a report of the seized articles Jangia, old ragged and khaki cloth piece, shalwar and shamij and it has been opined that blood was detected on jangia and the semen was also detected on the old rag. The trial court taking into consideration the evidence of the witness and the material of ext. proved and convicted and sentenced of the appellant.

11. Learned counsel for the appellant however contended the age of the victim was 17-18 years. It has further been contended that the appellant surrendered on 30.12.2010 just after two

days of the occurrence and though the blood and semen found on the clothes of the victim but the semen of the appellant was not tested or matched with the semen found on the clothes produced by the victim which was examined in F.S.L. report and a report submitted.

12. However, learned counsel for the State submits that it is a well proved case in which the victim had supported the prosecution case and not only identified the appellant but the doctor has also found the hymen recent ruptured. The clothes were seized by the police and the same was sent to the F.S.L. report and the doctor has opined that the sexual injury cannot be proved out or the rape cannot be ruled out and hence the prosecution has well proved of the case.

13. Having regard to the respective submission, I perused the record and go through the entire evidence. The prosecution case itself is specific in the first information report that the victim went to the bamboo club to meet the call of nature where she was raped by Chotu and thereafter she immediately came at her house and she disclosed about the occurrence. P.W.2 has stated that he saw the accused fleeing away along with the spade from the place of occurrence. P.W.3, the father has also stated that just after the occurrence, he heard and came and saw the victim and the victim disclosed about the occurrence after committing rape and he also



found the clothes of victim besmeared with float and the mother was immediately reported to the police and the clothes were also produced for which the production-cum-seizure list prepared marked as exhibit. P.W.5 is the victim herself. She has supported the prosecution case and in his detailed cross examination, there is nothing in her evidence to disbelieve her testimony and her evidence found liable to be trust worthy. The mother of the victim has also corroborated the cases of the victim and the doctor has opined that the possibility of sexual intercourse cannot be denied and the I.O. has given description of place of occurrence which is surrounded by the mango orchard and the agriculture. Hence going through the entire evidence it has been found that the witness to disbelieve the testimony.

14. However, the submission made by the learned counsel for the appellant that the victim has not been examined. However, Section 53 of the Code of Criminal Procedure provides the examination of accused by medical practice on the request of the police officer and examination and section 54A provides the examination of the person accused of medical by practitioner. However, the occurrence took place on 27.12.2010. However, the I.O. in his evidence stated that on 27.12.2010, he raided the house of the appellant but he found the appellant absconding and hence he was not arrested on the date of occurrence rather he surrendered before the

court on 30.12.2010.

15. However, having regard to the fact that the appellant having been surrendered after two days of the occurrence the examination by medical practitioner is hardly of any use as in case if the accused has been arrested on a day of occurrence, the examination of his medical evidence made would have some significance. However, non-examination of the victim does not cause any prejudiced and further there is reasonable evidence of believing that the examination of person has afford evidence as to the commission of the occurrence after two days of the occurrence. However, the submission that the semen of the appellant was not match with the semen found on the clothes of mere mistake by the police for not matching the semen in view of the nature of evidence adduced against the appellant. The victim has specifically alleged and deposed against the appellant to have committed rape on her person. This followed that the evidence of the P.W.2 that she saw the appellant fleeing away from the side of occurrence along with spade and further the other corroborated evidence of the other witness P.W.1 the father and mother of the victim as the victim disclosed about the occurrence just after the occurrence on reaching the evidence of the other witness. P.W.1 also saw the victim coming weeping just after the occurrence and further the evidence of the doctor that he found injury on the

private part of the victim and the clothes produced which was sent for F.S.L. report and the F.S.L. report found the semen blood.

16. Hence, having regard to the facts and circumstances, I find that the prosecution has been proved the reasonable doubt and merely because the victim was lodged that the semen does not cause any prejudiced to the accused and hence I do not find any merit to interfere with the order of conviction and sentence recorded by the trial court.

17. As a result, the appeal is dismissed.

(Gopal Prasad, J)

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