

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.991 of 2010**

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Gulab Chand Kamti, S/o Brahmdeo Kamti, R/o Vill. Gamaill, P.S. Bihariganj,  
District – Madhepura.

.... .... Appellant

Versus

The State of Bihar

.... .... Respondent

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**Appearance :**

|                      |                                                    |
|----------------------|----------------------------------------------------|
| For the Appellant    | : Mr. Uday Chand Prasad<br>Mr. Manoj Kumar         |
| For the Informant    | : Mr. Ramesh Kumar Singh<br>Mr. Sanjay Kumar Singh |
| For the Respondent/s | : Mr. A.K. Sinha, A.P.P.                           |

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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: 13-05-2016**

Today, learned counsel for the Appellant is present.

2. Yesterday, we have appointed learned counsel Mr. S.N. Prasad to appear amicus curiae but Today, learned counsel for the Appellant appears and submits that it was on account of personal difficulty, he could not appear before the Court Yesterday.

3. Hence, the earlier order dated 12.05.2016 is ignored.

4. Heard learned counsel for the Appellant and learned counsel appearing on behalf of the Additional Public Prosecutor as well as learned counsel for the Informant.

5. The appellant has been convicted under section 376 I.P.C. and sentenced to undergo Rigorous Imprisonment for life by a Judgment dated 24/30.07.2010 passed by the Additional Sessions Judge, F.T.C. No. II, Madhepura in connection with Sessions Trial No. 104 of

2009 arising out of Behariganj P.S. Case No. 17 of 2009 corresponding to G.R. No. 188 of 2009.

6. The case of the Informant Nutan Devi (P.W. 4), mother of the alleged victim is that on 08.02.2009 at about 2:00 pm. she suddenly heard cries of her daughter Shikha Kumari aged about 4 years, so she ran to see her. She found her unconscious screaming and the Appellant fleeing away from the place of occurrence. She then started screaming so the villagers caught hold of the Appellant. She saw underwear of her daughter was open and it appeared that she had been raped. On asking, the daughter said that the Appellant had done bad work with her.

7. During trial, the prosecution examined 7 witnesses. P.W. 1 Rahul Kumar Jha happens to be cousin of the Informant, who used to live in the same court-yard. He stated that when he repairing the radio, he suddenly heard the cries of a child. The child was the victim aged about 4 years. He saw that while screaming, she fell unconscious. Her underwear was open. The person, who had committed rape upon her, was seen fleeing away. He identified the present Appellant as the said person.

In cross-examination, he explains that he lived in the same court yard and the victim was his cousin. He also explains that thereafter he had gone to the Police Station and the Police had sent the victim to the Hospital for medical examination and he had not taken the blood stained underwear to the Police Station. He explained that the Appellant had been living in the village for sometime and that Tota Ram Kamti (D.W.1) was the husband of the present Mukhiya. It was suggested to him that there was some political enmity and therefore, the Appellant was falsely implicated.

8. P.W. 2 Raj Kumar Jha stated that on the date of



occurrence, he suddenly heard some cries of Nutan Devi, wife of Dayanand Jha (P.W. 3) and reached there and saw the Appellant fleeing away and the child aged about 3-4 years unconscious. He learnt that the Appellant had committed rape upon her. He also found semen in the underwear but which fact was not stated under section 161 Cr. P.C. He explained that he had not seen the occurrence himself and had seen the Appellant fleeing away at the distance of 200 yards. He had not spoken to the victim directly and had merely seen the Appellant. However, he was not the person who had caught hold of the Appellant.

9. P.W. 3 Tuntun Jha stated that on the date of occurrence while he was returning from his fields, he heard *hulla* at which he went to the victim and saw the mother of the victim crying and saying that the Appellant had committed rape and run away. He also saw the Appellant fleeing away from there.

His attention was drawn to the earlier statement that he had not stated that he went to the field and saw the victim screaming and whatever he had learnt was from the mother of the victim. He was asked to describe, the topography of the field from where he was returning, which has no relevance in the present case. However, it appears that the fields were sown with crops. He was also questioned about the previous Gram Panchayat Elections in which his wife of younger brother had also contested election against the wife of Tota Ram Kamti (D.W. 1). The Appellant and Tota Ram Kamti belonged to the same caste. He stated that the victim was his cousin and the house of the Appellant was about 40-50 meter away from there. On the date of occurrence, the father of the victim was not in the village. It was suggested to him that the Appellant had

falsely been implicated on account of the previous elections.

10. P.W. 4 Nutan Devi is the Informant and mother of the victim, who stated that on the date of occurrence, he suddenly heard the cries of her daughter so she went to the field, which was sown with crops and saw her daughter screaming and the Appellant fleeing away from there. Her daughter was naked and from her private part blood was oozing. When she started screaming, several villagers came. She asked her daughter, who replied that the Appellant had done some bad work. She identified the Appellant in the dock and her own signature on the *fardbeyan* is marked as Exhibit-1. She replied to the Court that she had brought the victim along with her, who disclosed her name as “.....” (victim is a minor therefore her identity is protected) and the father’s name as Dayanand Jha and the mother’s as Nutan Devi (P.W. 4). She stated that the daughter was about 5 years and at the time of occurrence, she was wearing a frock and underwear. Her underwear was open and blood stained. She had left the underwear at home. She had shown the blood stained cloths to the Superintendent of Police and her daughter was medically examined.

In cross-examination, she stated that she was doing *Puja* when she heard cries of her daughter as also described her house and the topography. She also corroborated that P.W. 1 Rahul Kumar, her nephew came on her cries and several villagers had also come, who had chased and caught hold of the Appellant and taken him to the house of Mukhiya where he was detained for 5-6 hours. Her attention was drawn to the earlier statement that she had not stated that the underwear was blood stained and that she had left it at home and she had shown it to the Superintendent of

Police. It was suggested to her that in fact, the Appellant had falsely been implicated on account of enmity.

11. P.W. 5 Brajnandan Singh is a formal Police Officer, who assumed the Investigation on 20.03.2009 and received the Medical Report and thereafter, submitted the charge-sheet. He identifies the handwriting of another Police Officer on some requisitions marked as Exhibit-2. There is nothing else of note in his cross-examination.

12. P.W. 6 Dr. Karuna Kumari examined the injured on 09.02.2009 and opined that she was aged about 6-7 years and found the following injuries on her person :

*Patient conscious. Brest and auxiliary hair not present. Any external injury not present on her whole body but sign of trauma present on vulva and vulva is swollen and reddish. Hymen ruptured. Public hair not present. Pathological examination report of vagina swabs no spermatozoa dead or alive. R.B.C. is plenty with push cells and epithelial cells.*

She explains the difference between rupture and tear of hymen and there is nothing else which is of note in the cross-examination.

13. P.W. 7 Shiv Sager Singh is the Officer-in-Charge of Bihariganj Police Station. On 08.02.2009, he assumed the investigation of the present case. He examined the place of occurrence being a field where peas had been sown and found some broken plants there. The place of occurrence was West of the *Bari* of the Informant and nearby was the field of P.W. 3 Tuntun Jha and others. He arrested the Appellant and identified him in Court. He stated that he had inspected the place of occurrence at

about 6:00 pm. in the evening and the villagers had handed over the Appellant to him but had failed to get him medically examined. He did not examine the person of the victim and he had not noted as to what the exact area the plants had been found broken. He confirmed that P.W. 2 Raj Kumar Jha had not stated about the presence of semen in the underwear of the victim nor he was an eye witness.

14. The D.W. 1 Totaram Kamti, D.W. 2 Krishnadeo Mandal, D.W. 3 Jitendra Mandal and D.W. 4 Shatrughan Mandal had stated that the Appellant had falsely been implicated on account of land dispute, but there is no documentary proof in this regard nor were these witnesses examined during investigation. D.W.4 Shatrughan Mandal further stated that the Appellant had been caught and detained on the date of occurrence and assaulted and thereafter, handed over to the Police.

15. The submission of learned counsel for the Appellant is that non-examination of the victim goes to the root of the prosecution case and on account of such failure, it should be disbelieved. Moreover, the family members of the victim have not given consistent evidence in regard to the age of the victim which does not match with the evidence of the Doctor, who stated that she was 6-7 years of age. Moreover, the Appellant had been implicated on account of land dispute and he remained in custody about 7 years, therefore, he should be acquitted of the charges.

16. On the other hand, learned counsel for the Informant and learned counsel for the Additional Public Prosecutor submit that it is a fool-proof case and therefore, the conviction should be maintained.

17. On going through the evidence of the witnesses, discussed above, we find that P.W. 1 Rahul Kumar Jha and P.W. 3 Tuntun

Jha are cousins of the victim, whereas P.W. 4 Nutan Devi is the mother of the victim. P.W. 2 Raj Kumar Jha is said to be the person who was returning from the field and is independent, even though a chance witness. The evidence of these four witnesses are consistent on the point of seeing of the victim, who was small child lying in the field screaming and the Appellant fleeing away from there. The further support of the prosecution case is from the consistent hearsay evidence that the child had disclosed that the Appellant had done some bad work with her. Dr. Karuna Kumari (P.W. 6) found the sign of Trauma on Vulva, which was swollen and reddish, hymen ruptured whereas the Investigating Officer on examination of place of occurrence found some plants broken in the field where the child was found, thus, further corroborating the prosecution case. No doubt, the prosecution has not examined the victim herself but she being a small child, who was brought to the Court by her mother on the date of her examination does not by itself persuade this Court to reject the prosecution case, on this ground alone.

18. In view of the above discussion, the Appeal is dismissed.

**(Anjana Prakash, J.)**

**(Rajendra Kumar Mishra, J.)**

Shailendra/-

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