

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.85 of 2013

Against the judgment of conviction dated 29.11.2012 and order of sentence 30.11.2012 passed by Sri Shailendra Kumar Pandey, learned Additional District & Sessions Judge-1st, Siwan, in G.R. No. 480 of 2010/Sessions Trial No. 283 of 2010.

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Madan Mahto @ Madan Kumar, Son of Dasharath Mahto Resident of Kabilashpur, P.S.- Thawe, District- Gopalganj.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : None.

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

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 25-02-2016

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

2. This appeal arises out of the judgment of conviction dated 29.11.2012 and order of sentence dated 30.11.2012 passed by Sri Shailendra Kumar Pandey, learned Additional District & Sessions Judge-1st, Siwan, in G.R. No. 480 of 2010/Sessions Trial No. 283 of 2010 by which the appellant had been convicted for offence under Section 376 of Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and payment of fine of Rs.5000/- and for non-payment of fine further sentenced to undergo imprisonment for

two months.

3. The prosecution case as alleged in the First Information Report lodged on the basis of Fardbeyan of Suresh Sah recorded by Shri D.K.Sinha, S.H.O., Braharia, at 17.00 hours on 16.03.2010 that four and half years old daughter of the informant, Suresh Sah named Sapna Kumari, a student of Class-I returned to the grocery shop of the informant at Purana Bazar after attending the school at 4.00 P.M. Thereafter, the victim put her books in the shop went to the north of the Bazar to meet the call of nature. Further case is that after half an hour, his daughter returned to the shop of the informant and started weeping and crying, on which the informant asked her about cause of such cry. Then the victim, the daughter of the informant disclosed that one person had committed rape upon her, then informant saw blood oozing out from private part of the victim and her pant was besmeared with blood. Thereafter, the informant took her in his laps and proceeded to the north of the bazaar towards Mathia where occurrence had taken place. The informant reached there and saw five persons were sitting. On enquiry from the daughter of the informant, the daughter indicated one person amongst five persons, who had outrage her modesty. Several peoples came from the market and catch hold of the said person and assaulted the accused. In the meantime, Chaukidar also came there and inform the police station. On receiving

information, the police proceeded and reached there then the injured accused was brought to hospital for his treatment and the daughter of the informant also brought to hospital for her treatment. The accused person disclosed his name as Madan Mahto @ Madan Kumar.

4. On the Fardbeyan, an endorsement was made to register the case i.e. Braharia P.S. Case No. 28 of 2010 dated 16.03.2010 for offence under Section 376 of Indian Penal Code. After lodging the F.I.R., the police proceeded for investigation. During investigation, the I.O. got the victim examined by a Doctor. The accused Madan Kumar was also medically examined and his application for medical examination had been proved as Exhibit-5/1. The statement of the victim recorded and both the victim and accused send for their medical examination at Sadar Hospital, Siwan. The statement of witnesses were recorded. Thereafter, the police submitted charge sheet. After submitting charge sheet cognizance taken and case was committed to the Court of Sessions. Subsequently, charge was framed for offence under Section 376 of Indian Penal Code for alleged rape of the victim and trial proceeded.

5. During trial, nine witnesses were examined. P.W. 1 is Munna Sah. He is uncle of the victim and supported the prosecution case. The victim disclosed about rape to P.W.1 and the accused had fled away towards north, on which father of the victim took the victim

in his laps and proceeded to the site where the occurrence took place. P.W. 2 is Parshuram Sah also supported the prosecution case regarding rape. P.W. 3 is Rajendra Sah. He had also deposed that while he was at his shop (grocery) in the meantime daughter of the informant Suresh Sah came to the shop of the informant and put her bags and proceeded to meet call of nature. The victim girl returned after half an hour with weeping and her pant was besmeared with blood. On enquiry, the victim disclosed about rape by the accused by closing her mouth. P.W.4 is Dhrub Kumar. He has also deposed that when the victim returned from the school he was at his shop at Purana Bazar and after returning from the school, the victim went to meet call of nature. When she returned she was weeping and disclosed about rape then the witness along with father of the victim went at the place of occurrence and the victim identified the person who had committed rape upon her. P.W. 5 is Raj Kumar Sah a betel shop owner and his shop situated beside the shop of Suresh Sah and had also supported the prosecution case. P.W.6 is Suresh Sah, the informant supported the prosecution case as alleged in the First Information Report. P.W.7 is Sapna Kumari the victim had also supported the prosecution case. She deposed that at the time of occurrence she was a student of Nursery and she returned from school to the shop of his father, she put her bag at the shop of his father and proceeded to meet call of nature and the

person who was standing in the dock caught hold of her and lifted her in the bush where the accused person opened his pant and also opened pant of the victim and committed illicit act by gagging her mouth. When she makes cry the accused person had fled away towards Mathia. She also deposed that blood oozing out from her private part and her pant was besmeared with blood. She disclosed this fact to her father. P.W. 8 is Sheema Choudhary who examined the victim after occurrence. She found the following injuries on the person of the victim that “lacerated wound over perineum just up to above anal orifice. No fresh bleeding. Blood stained cloth handed over to the police. In her cross-examination she stated that it is difficult to see that hymen was ruptured or not” and had stated that accused was not examined by her. P.W.9 is Dhananjay Kumar Sinha who recorded statement of the informant which has been marked as Exhibit-3, the endorsement on the Fardbeyan which has been marked as Exhibit-3/1 and formal F.I.R. which has been marked as Exhibit-4. He has further proved application for medical examination of the victim which has been marked as Exhibit-5 and application for medical examination of the accused which has been marked as Exhibit5/1. He recorded the statement of witnesses and inspected the P.O. which is Khar situated at north of Purana Bazar. The police after investigation submitted charge sheet.

6. The defence set up on behalf of the appellant that appellant is innocent and a false case has been instituted against the appellant. It is further stated that victim had deposed falsely at the instance of her father. Further defence of the appellant, that informant had brutally assaulted the accused on the basis of doubt in his mind and even asked the people to assault him and there was no protest of this assault and to save their skin a false case has been instituted bringing the police in collusion with them.

7. However, no witness examined on behalf of the appellant.

8. The learned counsel for the appellant challenged the order of conviction and sentence on the ground that appellant has been falsely implicated in this case merely on suspicion and doubt and there is no witness to the occurrence and the case was of misleading identification by the witness, though, in court, but medical examination report has not been proved.

9. Learned counsel for the State however submits that there is specific evidence regarding rape. Further asserted that it is true that there is no eye witness to the occurrence, but evidence of the doctor transpires that some injuries on private part of the victim which itself indicates that the version of the victim stand corroborated and doctor has not ruled out about rape. The doctor further stated that it is difficult to see whether hymen of the victim was ruptured or not.

Further the doctor opined that lacerated wound over perineum just up to above anal orifice which itself indicates that some injuries on the private part of the victim.

10. The informant P.W.6 in his evidence has supported the prosecution case that his daughter Sapna Kumari returned from school and put her bag in his shop and went to meet call of nature. After half an hour, she returned with weeping and crying, on enquiry, she disclosed about the rape by one person who said to have fled away after occurrence towards north of Purana Bazar. The informant saw pant of the victim besmeared with blood. Thereafter, the informant took the victim in his laps and proceeded towards the place of occurrence and the direction, the victim proved. The informant saw five persons were sitting there and out of five persons, the victim identified one person who committed rape. Thereafter, information given to the police station and police came there and recorded statement of the informant on basis of which F.I.R. lodged. The witnesses have also supported the prosecution case. The I.O. had given description of the P.O. and found there grass was trampled. He has also given specific boundary of the P.O. Further, the I.O. had stated that no blood stained was found at the place of occurrence and the place of occurrence is remote and there is no evidence regarding profuse bleeding. However, other witnesses have also supported the



prosecution case to the effect that victim returned from her school and put her bag in the shop of the informant and went to meet call of nature. When she returned after half an hour she was weeping and crying, subsequently the father along with the victim and other witnesses went to the place of occurrence and found the appellant proceeded and the victim identified the appellant amongst five persons and this part of evidence has also supported by other witnesses about disclosure of rape by the victim. Further P.Ws. 1, 2, 3, 4 and 5 have also supported the prosecution case.

11. However, criticism has been made that as per the evidence of the I.O., the police proceeded to the place of occurrence on information having been received from the Choukidar. It is asserted that, though, Sanha entry was made, but said Sanha entry was not brought on record and hence it is well establish that earlier version not brought on record.

12. However, having regard to the fact that occurrence took place at about 4.00 P.M. and the matter was immediately reported to the police and even Choukidar intimated about the occurrence to the police and police reached there simultaneously. The victim identified the accused-appellant.

13. Hence from the entire episode, it is apparent that from the time of occurrence till lodging of F.I.R. well within half an hour

and hence there is no possibility of any manipulation or deliberation in lodging the F.I.R. and the matter has been reported at the earliest leaving no doubt or time to manipulate or manufacturing statement. The police immediately rushed to the place of occurrence and caught hold of the accused and proceeded immediately for lodging the F.I.R. and started investigation.

14. Regard being had to the fact that prosecution case cannot be brass aside merely on the ground that Sanha entry has not been brought on record. Further defence has been taken that accused person was beaten on mere suspicion and to save themselves from being prosecuted for beating and so a false case has been lodged. However, no reason assigned to falsely implication of the appellant as the matter reported fast after the occurrence and there is no delay in lodging the F.I.R. and getting no time to manufacture the case to falsely implicate the appellant.

15. In such circumstances, I do not find any reason in the circumstance to disbelieve the prosecution story. However, the criticism has been made that no T.I. parade was conducted. However, there is no necessary to conduct the T.I. parade when the accused-appellant identified by the victim herself at the spot just after the occurrence and as per case record itself it appears that within half an hour the accused-appellant was apprehended and identified by the

victim. Hence, there is no possibility or mistaken identification.

16. Going to the entire evidence and facts and circumstances of the case, I found that prosecution has proved the charge and there is no merit to interfere with judgment of conviction and sentence recorded by the trial court.

17. **In the result, the appeal is dismissed.**

(Gopal Prasad, J)

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