

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.176 of 2012

(Against the judgment of conviction, dated 10.12.2011 and order of sentence, dated 16.12.2011, passed by Shri Madan Kishore Kaushik, learned Special Judge SC/ST (Prevention of Atrocities) Act, Patna in Special Case No. 93 of 2009, arising out of Ghoshwari P.S. case no. 38 of 2009)

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Ram Nandan Mahto, S/O Late Garho Mahto, Resident of Village- Prahlapur, P.S. Ghoswari, District Patna.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Premchand Yadav, Advocate

For the Respondent/s : Mr. A. K. Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

And

HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 08-12-2016

The instant appeal is preferred against the judgment of conviction, dated 10.12.2011 and order of sentence, dated 16.12.2011, passed by learned Special Judge SC/ST (Prevention of Atrocities) Act, Patna in Special Case No. 93 of 2009, arising out of Ghoshwari P.S. case no. 38 of 2009, dated 16.06.2009, under Section 376 of the Indian Penal Code and 3(x) of the SC/ST (Prevention of Atrocities) Act, whereby the learned trial court convicted the appellant under Section 376 (2) (f) of the Indian Penal Code and Section 3(1) (xi) of the SC/ST (Prevention of Atrocities) Act and sentenced him to undergo imprisonment for life and fine of Rs.2000/- for the offence



under Section 376 (2) (f) of the Indian Penal Code and in default of payment of fine, to undergo S.I. for three months. The appellant has been further sentenced to undergo R.I. for 4 years and a fine of Rs.1000/- for the offence under Section 3(1) (xi) of the SC/ST (Prevention of Atrocities) Act and in default of payment of fine to undergo S.I. for two months. However, both the sentences were directed to run concurrently.

2. The prosecution case is based upon the fardbeyan of victim 'B' (name withheld), aged about 8 years, recorded on 16.06.2009 at 10.30 A.M. at Sub-Divisional Hospital, Barh at Mahila Ward, Bed No.1 by A.S.I. Subodh Mandal. The victim 'B' stated that on 15.09.2009 at about 6.00 P.M., she was returning after answering call of nature. While she was returning, she was caught by the appellant near the house of Ram Lagan Thakur and taken inside the deserted house of Ram Lagan Thakur and forced on a cot. He started opening her pant, to which she protested. The appellant in pursuit of his lust, by force closed her mouth and committed rape, causing bleeding from her private part. After committing rape, he brought her out of the house and asked her not to disclose the incident to anyone. He advised her that in case, if anyone enquires, then she should state that she suffered the injuries from 'Khuts'. The victim anyhow proceeded towards her house, but fainted as soon as she reached her



house, whereafter she was taken to hospital. On regaining consciousness, she gave her statement to the police.

3. On the basis of the fardbeyan of the victim 'B', Ghoshwari P.S. case no. 38 of 2009, dated 16.06.2009, under Section 376 of the Indian Penal Code and 3(x) of the SC/ST (Prevention of Atrocities) Act was registered. After investigation, the police submitted charge-sheet, whereafter cognizance was taken and the case was committed and transferred to the file of Special Judge SC/ST (Prevention of Atrocities) Act for trial. Charges were framed under Section 376 (2) (f) of the Indian Penal Code and Section 3(1) (xi) of the SC/ST (Prevention of Atrocities) Act, to which the appellant pleaded not guilty and claimed to be tried.

4. The prosecution in support of its case examined as many as 7 witnesses P.W.1 is Madho Rajak; P.W. 2 Varsha Kumari is the victim; P.W.3 is Dhupan Rajak; P.W.4 Subodh Mandal is the investigating officer of the case; P.W. 5 is Dr. (Mrs.) Anjali Lal, P.W.6 is Dr. Siyaram Singh and P.W.7 is Das Ashok Kumar. Besides oral evidence, the prosecution also exhibited some documents including the fardbeyan, injury report and F.S.L. report. Ext.1 is signature of Madho Rajak on seizure list. Ext.1/1 is the seizure list. Ext.2 is the Fardbeyan, Ext.2/1 is the endorsement and signature on fardbeyan of Nisar Ahmad. Ext. 3 is another seizure list. Ext.4 is



formal F.I.R. Ext.5 is injury report prepared by Dr. Anjali Lal (P.W.5), Ext.5/1 is the Microscopic examination report, Ext.5/2 is the Radiological report and Ext.6 is the F.S.L. report.

5. The defence did not examine any witness nor produced any document in support of its case. The case of defence in the statement under Section 313 of Cr.P.C. was complete denial of the occurrence. The trial court on consideration of materials on record, convicted and sentenced the appellant, as noticed, in the earlier paragraphs.

6. As noticed earlier, the prosecution examined 7 witnesses in support of its case. Out of these 7 witnesses, P.W.1 is the father of the victim and a hearsay witness. His evidence is based on the information of incident narrated by his victim daughter. P.W.2 is the victim herself, who has supported the prosecution case in her evidence. P.W.3 Dhupan Rajak is the uncle of the victim as well as attesting witness of F.I.R. P.W.4 Subodh Mandal is the investigating officer of the case. P.W.5 Dr. (Mrs.) Anjali Lal had examined P.W.2. P.W. 6 Dr. Siyaram Singh has conducted radiological examination on the victim and P.W.7 Das Ashok Kumar has proved the F.S.L. report.

7. It is relevant to state here that on account of inept handling of the defence case, none of the prosecution witnesses right from P.W.3 to P.W.7, have been cross-examined; the evidence of



these witnesses including that of doctor (P.W.5), who found perpetration of rape on the person of the victim (P.W.2) as well as presence of semens on her person, have not been challenged or disputed. In view of non-cross-examination of these witnesses, the factum of rape has gone unchallenged as well. Furthermore, the credibility of evidence of victim (P.W.2) has not been properly tested, in so much so the defence has not put any question with regard to her mental condition as well as on the point of sexual assault. Besides this, the corroborative evidence supports the charge of rape.

8. In face of such adverse position, learned counsel for the appellant has confined his argument on the point of sentence. He submits that the appellant has three grownup daughters to be married and the instant offence is his first one, and no past conviction is recorded against him. In such, circumstances, the learned counsel prays for leniency in the quantum of sentence including fine. He further submits that the appellant by this time has remained in jail custody for 7 ½ years.

9. Learned Additional Public Prosecution has opposed the prayer of the appellant and submits that no leniency should be granted, as the appellant has ravished the modesty of a small girl, aged about 8 years, and if at all court considers clemency, the victim should be adequately compensated.



10. Having regard to the fact that the appellant has remained in custody for 7 ½ years and has three unmarried daughters and also taking into consideration that there is no past antecedent, we find it appropriate that the sentence of imprisonment for life be reduced to a period of Rigorous Imprisonment for 10 years along with a fine of Rs.75,000/- under Section 376(2)(f) of the Indian Penal Code, out of which Rs.50,000/- should be paid to the victim by the learned trial court after proper verification. In case of default of payment of fine, the appellant would undergo additional R.I. for one year, maintaining the sentence inflicted by the learned trial court in respect of offence under Section 3(1) (xi) of the SC/ST (Prevention of Atrocities) Act with a further direction that both the sentences would run concurrently.

11. With the aforesaid modification in the sentence, the instant appeal is dismissed.

(Samarendra Pratap Singh, J.)

(Aditya Kumar Trivedi, J.)

Uday/-

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