

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.949 of 2013

[Against the judgment of conviction dated 07.06.2013 and order of sentence dated 14.06.2013 passed by the 4th Additional Sessions Judge, Samastipur, in Sessions Trial No.609 of 2010/ 430 of 2012 arising out of Musrigharari P.S. Case No.87 of 2008.]

=====

1. Binod Singh, son of late Ram Chandar Singh alias late Ram Chandra Thakur,
resident of village- Pahepur Shambhupatti, P.S.- Muffasil, District- Samastipur
.... Appellant/s

Versus

1. The State of Bihar
.... Respondent/s

=====

Appearance:

For the Appellant/s : Mr. S. N. P. Sinha, Sr. Advocate with
Mr. J. N. Sinha, Advocate
Mr. Rohit Kumar, Advocate
Ms. Nita Kumari, Advocate

For the Respondent/s : Mr. S. C. Mishra, APP

=====

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

&

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 22-04-2016

1. The sole Appellant has been convicted under Section(s) 366-A/34, 376 and 120-B of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years with fine of ₹10,000/- under Section 366-A/34, rigorous imprisonment for life with fine of ₹20,000/- under Section 376 read with 120-B Indian Penal Code and in default of payment of fine to undergo simple imprisonment for one year by judgment of conviction dated 07.06.2013 and order of sentence dated 14.06.2013 passed by the 4th Additional Sessions Judge, Samastipur, in Sessions Trial No.609 of 2010/ 430 of 2012 arising out of

Musrigharari P.S. Case No.87 of 2008.

2. The case of the prosecution according to the written report of Meena Devi (PW 4) is that while she lived in the village, her husband used to work in Ludhiana. Her daughter aged about 12 years had developed some problem of eczema for which she had taken her for some local treatment on 17.06.2008 along with two other children. While she was returning, she stood near the Hello Point STD Booth at Musrigharari and tried to make call from the STD Booth but the same was out of order so, she could not call up. She then started waiting to board a public vehicle for returning home when she met a lady, who was about 35 years of age and a male aged about 30 years standing at the Booth. They started to ask her whereabouts and when she chatted with them about the problem of her daughter they suggested taking her to Muzaffarpur and assured that Dr. Birendra Sharma would cure her. While they were standing outside, the Booth owner came out and said that there was a missed call and the Booth owner made a call and gave the phone to the lady, who talked. However, she could hear the conversation that they were bringing a patient. Both of them sat on a public vehicle going towards Muzaffarpur and got off there. Two persons on a motor cycle were waiting at the Bus Stand who seated her daughter on the same saying that they were proceeding to the Doctor and they should follow on the rickshaw. However, the daughter and the accused persons disappeared. So, she went to Ahiyapur P.S., who

directed her to Musrigharari P.S. for instituting the case. Then, she informed her husband from Ahiyapur P.S. itself and on his return she filed the written report on 21.06.2008 i.e. four days later at Musrigharari P.S.

3. The sequence of events would be described from the evidence of the Investigating Officer, Raj Kumar Singh, PW 8, which we shall discuss first.

He stated that on 21.06.2008 while he was posted as A.S.I. at Musrigharari PS. He received a written report of Meena Devi (PW 4) upon which Musrigharari P.S. Case No.87 of 2008 was instituted. He proved the formal F.I.R. and the typed written report as Ext. 3 and 3/1 respectively. He then started investigation and inspected the Hello Point STD Booth where the Informant and her daughter had met the accused. Taking a lead from there, he found out that it was Appellant, Binod Singh, and one Rupa Devi, as also some others, who were involved in this crime. Thereafter, Appellant, Binod Singh was arrested from Motihari Railway Station and it was found that Rupa Devi was lodged in the jail in another case of similar nature. She was taken on police remand, who disclosed that the girl had been sold for a consideration of ₹25,000/- to one Dinanath Jaiswal of Nakhas Nohalla. When he reached his house, he recovered the girl from there on 17.07.2008. The said person admitted that he had purchased the girl for ₹20,000/-. On 18.07.2008 i.e. on the next day she was medically examined and her

statement was recorded under Section 164 C. P. C. She supported the fact and specifically stated that the Appellant and one Khan Saheb had kidnapped and committed rape with her. She was removed to various locations in the period of her confinement.

In cross-examination, several questions were directed to him as to how he had arrested the Appellant without assistance of the local police Officer which he evaded. He also conceded that he had not recorded the statement of the victim under Section 161 Cr. P.C. nor got her clothes tested because she had been recovered a month later.

4. The victim was examined as PW 3, who stated that on the date of occurrence while she and her mother were standing near the Telephone Booth, the Appellant, whom she identified in the dock, suggested that she be taken to a doctor at Muzaffarpur, who would cure her. They then left together. However, when they reached Muzaffarpur, one person took her away on the motorcycle. The two persons she named as Rupa and Khan Saheb. Her mother did not reach there. At night, she was given food and raped by Khan Saheb and when she protested she was assaulted. Similarly, the Appellant also raped her. In the morning, Rupa and Khan Saheb said that they would take her to her mother but instead took her to Hajipur where she met an old man, who told her to act as a maid. It was from there that she was recovered. She identified the Appellant in the dock.

In cross-examination, she stated that she had two other

sisters and about the previous local treatment that had been administered to her at the behest of her mother. She stated that she learnt the name of Khan Saheb on account of conversation between themselves. She also described the gory details of the rape and the consequence of the same.

5. PW 4 (Meena Devi) is mother of the victim and the Informant, who reiterated the statement given in the written report. She identified the Appellant in the dock. She explained as to how they had been duped for going to Muzaffarpur by the Appellant and another lady. Thereafter, her daughter was kidnapped by some persons. She also stated that about a month later the police recovered her daughter and brought her home. Her daughter disclosed to her that one Khan Saheb and the Appellant, who was standing in the dock, had committed rape upon her and kept her in the house of one Deenanath Jaiswal at Hajipur from where she was recovered. She stated that she did not know the Appellant from before and there is nothing else which is of consequence in her evidence.

6. PW 1 (Ram Prit Sahni) is a co-villager of the Informant, who stated about the written report having been filed at the Police Station, whereas, PW 2 (Mantoon Sahani) stated about the factum of kidnapping and recovery of victim.

7. PW 5 (Shivjee Sahani) is the father of the victim, who stated that he was informed by his wife about the kidnapping of his daughter, who was subsequently recovered.

8. PW 6 (Dr. Shobha Sinha) examined the victim and found her physical condition as follows:

- (A) Height of the girl- 4 feet 5 inch.
- (B) Weight – 65 pounds
- (C) Age of the girl was between 12 to 13 years.
- (D) No injury was found on the private part of the victim. Hymen was found old healed ruptured. Vagina admits one finger loose. There may or may be the chance of sexual intercourse with the victim.
- (E) No spermatozoa were found in vaginal swab. Spermatozoa can vanish after twenty four hour.
- (F) Public hair present but scanty and auxiliary hair not present. Both breasts were found developed. It could not be ascertained as to whether rape was committed with the victim or not.
- (G) I had prepared the examination report of the victim on 19.07.2008 at 7.00 AM. The carbon copy of the said report is before me which was prepared with the original copy in the same process.

She has proved the carbon copy of the Medical Report as Ext.2.

9. PW 7 (Umesh Sahani) is the neighbour of the Informant, who had stated that he had seen the Informant and the kidnapped girl near the STD Booth after the local treatment but was not able to identify the Appellant as the person, who was talking to the Informant. He fully supported the fact of kidnapping. He has proved his signature on the photocopy of the written report as Ext.1 and of Mantu Sahani and Ram Prit Sahani as Ext. ½ and 1/3. He stated that the Informant had also told him about the sequence of events narrated in the written report.

10. Much argument has been raised on behalf of the Appellant that there is non-compliance of Section 53-A Cr. P.C. which enjoins the prosecution to hold DNA Test. However, in the facts of the case it would not help the Appellant, inasmuch, as the admitted position is that the Appellant was arrested about eight days after the occurrence, whereas, the victim was recovered more than a month later and, hence, there was no question of any signs of sexual intercourse being present on their persons after such a long gap.

11. We also find clinching evidence by way of PW 3 and 4, who identified the Appellant in dock as the person, who after duping them had kidnapped PW 3 as also committed rape upon her. They had no reason to falsely implicate the Appellant nor was there any question of them not able to identify him or any possibility of mistaken identity. It also appears that the Investigating Officer has fully explained the sequence of events under which the victim was recovered, thus, connecting the Appellant to crime.

12. In such circumstances, the appeal is dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

J.Alam/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	14.05.2016
Transmission Date	14.05.2016