

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.987 of 2013

[Against the judgment of conviction dated 30th August, 2013, and order of sentence dated 7th September, 2013, passed by the Additional Sessions Judge, Supaul, in Sessions Trial No.10 of 2009 arising out of Marauna P.S. Case No.03 of 2007]

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Ram Sogarath Mandal, son of late Chhedi Mandal, resident of village-Lalminiya,
P.S.-Maruna, District-Supaul

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jitendra Prasad Saha, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

&

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 06-04-2016

1. Sole Appellant has been convicted under Section 376
(2) (F) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life by the judgment of conviction dated 30th August, 2013, and order of sentence dated 7th September, 2013, passed by the Additional Sessions Judge, Supaul, in Sessions Trial No.10 of 2009 arising out of Marauna P.S. Case No.03 of 2007.

2. The case of the prosecution according to PW 10 (Brij Mohan Kamat), father of the prosecutrix, is that his daughter aged about

seven years was raped by the Appellant on 08.01.2007 at 7.30 in the evening. This information was given to him by his wife and child.

3. During trial, the prosecution examined fourteen witnesses. PW 3 (Rajendra Ram), PW 4 (Deo Narain Paswan), PW 5 (Mishra Ram), PW 6 (Ram Lakhan Paswan), PW 7 (Bisho Sah), PW 8 (Jiwachh Sah) and PW 9 (Bechan Paswan) have been declared hostile.

PW 12 (Jitendra Prasad Singh) and PW 14 (Jagat Narain Singh) are the Police Officers, who investigated the case partially. PW 1 (Sidhnath Singh) is also a Police Officer, who had sent the victim (PW 2) to the Doctor. PW 10 (Brij Mohan Kamat) is the Informant, whereas, PW 11 (Dr. Vijay Pratap Singh) and PW 13 (Dr. Bibha Jha) examined the victim (PW 2).

4. The defence examined two witnesses, namely, DW 1 (Shashikant Sharma) and DW 2 (Chote Lal Mandal) on the point that the Appellant had not committed this crime.

5. In order to understand the veracity of the prosecution case, it would be essential to discuss, in some details, the evidence of PW 2, the prosecutrix, who was merely thirteen years on the date of deposition. She stated that on the date of occurrence at about 7.30 PM when she had gone to bring vegetables and was returning home, the Appellant caught hold of her and felled her down and thereafter committed rape due to which she started bleeding. She was lifted by an

old gentleman and brought home. When she reached home, she informed her mother, who in turn, informed her father. She identified the Appellant in Court.

In cross-examination, some questions were directed to her with regard to the place of occurrence which is of no importance. She also stated that her mother had not told her anything and she has deposed whatever was true. She also conceded that there was a *Panchayati* for this occurrence in which it appears from the *fard-e-bayan* that an offer of rupees fifteen thousand was made but the same was refused and the case was instituted. There is nothing which would discredit this witness in any manner whatsoever.

6. PW 11 (Dr. Vijay Pratap Singh) stated that on 21.01.2007 he had examined the girl and found her to be a minor. He also stated that there was no suspicious stain or any foreign body on her private part nor any external injury. Sample taken from the vagina did not reveal any sperm.

In cross-examination, he stated that it was Dr. Bibha Jha, who had initially examined the victim and, therefore, it is important to discuss her evidence.

7. PW 13 (Dr. Bibha Jha) stated that on 10.1.2007 i.e. two days later she had examined the victim and found bleeding injury on her private part which was still bleeding. However, no seminal fluid was

found there. She had referred the patient to DMCH, Darbhanga, for microscopic examination and she did not receive the report.

8. PW 10 (Brij Mohan Kamat), father of the victim, stated that on the date of occurrence he was informed by his wife that his daughter had been raped by the Appellant and brought home by a kind *Sadhu*. Right after the occurrence, some complaints were made but the Appellant started to flee away but he was caught by the *Chaukidar*, who kept him overnight, and released in the next morning. A *Panchayati* was also held in the matter in which offer of ₹fifteen thousand was made but he refused the same and thereafter he instituted the present First Information Report. He proved the same as Ext.1. He describes the underclothes of the girl which was seized by the police. He proved the seizure list as Ext.2. According to him, his daughter was sent for medical examination at Nirmali Hospital and thereafter to DMCH, Darbhanga.

In cross-examination, it was suggested to him that, in fact, he had given a different statement to the Dy. Superintendent of Police, Nirmali, at Nirmali Hospital, and the Appellant has been implicated for some earlier dispute pending between himself and his father-in-law. However, he stated that he had good relation with the father-in-law of the Appellant but there is some suggestion that earlier there was a case between the parties.



9. PW 12 (Jitendra Prasad Singh) stated that he was second Investigating Officer and had taken over investigation on 15.04.2007 and thereafter he had examined some witnesses, who supported the factum of occurrence and also arrested the Appellant. He testified that relatives of the Appellant were trying somehow that the case be not instituted but that was not done. He proved his signature on the charge-sheet as Ext.4.

10. PW 14 (Jagat Narain Singh) stated that he instituted the First Information Report on 11.01.2007. He proved his signature on the *fard-e-bayan* as Ext.1/1 as also on the seizure list as Ext.2/1. He stated that number of witnesses were examined during investigation but he could not arrest the Appellant. He inspected the place of occurrence which was a field and a pond was also found nearby. There is nothing in his evidence which is of note.

11. As mentioned above, we find that the father of the victim, who was merely seven years of age on the date of reporting the matter, after it was sought to be pacified within the village instituted the First Information Report. He fully corroborates the fact of rape by the Appellant and the victim (PW 2) identified the Appellant as the person, who had committed the crime. The clinching evidence is that of PW 13 (Dr. Bibha Jha) who found injury on the private part of the victim which was still bleeding even two days later, thus, corroborating the factum of

rape.

12. In such circumstances, we do not find any merit in this Appeal. Accordingly, it is **dismissed**.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

J.Alam/-

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