

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.185 of 2016

Arising Out of PS.Case No. -63 Year- 2013 Thana -SAHEBPUR KAMAL District- BEGUSARAI

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Lalo Yadav Son of Late Phulten Yadav resident of village - Babu Rahi, Police
Station S. Kamal, District - Begusarai

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For State

Mr. Neeraj Kumar @ Sanidh, Amicus Curiae
Mr. S.N. Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: **HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL**)

Date: ...-08-2017

Vide judgment of conviction and order of sentence dated 12.02.2016 and 16.02.2016, respectively, passed by the Addl. Sessions Judge-I-cum- Special Judge, Begusarai, the sole appellant was held guilty under section 376 IPC read with section 6 of the Protection of Children from Sexual Offences, Act, 2012 (for short 'POCSO Act') and sentenced to undergo R.I. for 10 years with fine having default clause.

The facts and circumstances of the case leading to the trial, in brief, is that on 27.04.2013, the minor daughter of P.W.8 had gone in the afternoon to provide food to her father who was then engaged in threshing wheat at the field. At around 6 o'clock in the evening on way back home as she reached near Peer Baba Asthan, the appellant a co-villager, deceitfully captivated her and lifted her to the nearby wheat field and forcibly



committed rape. The victim (P.W.10) became unconscious. On regaining her consciousness she went to the house and narrated the incident to her mother (P.W.9). Her father was informed. He reached home at about 9 o'clock in the night. On the following day, an information was given to the police and the Fardbayan (Ext.5) of the victim was recorded near Peer Baba Asthan before Sahebpur Kamal SHO on 28.04.2013 at 8.30 A.M. which was attested by both the father (P.W.8) and mother (P.W.9). Lodging of the case gave rise to formal FIR (Ext.6). P.W. 12 investigated the case. He visited the house of the victim and seized the frock and undergarment of the victim under a seizure memo (Ext.4) to which the informant also became a witness. A medical board was constituted consisting of P.W.4 Dr. Ram Pravesh Prasad, P.W.5 Dr. Arun Kumar and P.W. 6 Dr. Kamini Rai. All the three doctors submitted their individual reports which are Exts. 1, 1/1 and 1/2. The I.O. produced the victim before the Judicial Magistrate (P.W.11) on 13.05.2013 and her statement was recorded under section 164 Cr. P.C. (Ext.3). The victim girl in her evidence has accepted her signatures thereon as Ext 2/1 to 2/3. P.W. 12 later made over the charge of investigation to P.W.13 who laid the charge-sheet. After taking cognizance, the case was committed to the court of sessions and, on transfer, the case came on the file of the learned Addl. Sessions Judge-I-cum-Special Judge, who, on analyzing the evidence, held the appellant guilty and sentenced in the manner stated above.

The prosecution, in order to prove the charges beyond shadow of reasonable doubt examined 13 P.Ws.

P.W.1 Manoj Yadav has stated that on the relevant date and time of occurrence he was coming from the field and noticed the prosecutrix



going ahead of him. She reached near the Peer Baba Asthan and turned towards the hand pump. When enquired she stated that the appellant had requested her to bring a can of water. He moved ahead. Few hours later the mother of the prosecutrix informed him that the appellant had committed rape on the victim. He rushed to the Bahiar where the father (P.W.8) of the victim girl was engaged in threshing and informed about the incident. P.W.2 is the uncle of the victim. He deposed that his niece (the victim) came home weeping and disclosed to her mother about the sexual assault committed on her by the appellant while she was coming back from the field after serving food to her father.

P.W.3 Umesh Yadav was returning from Bazar. He spotted the victim at the hand pump near Peer Baba Asthan when the appellant also appeared and requested her to bring for him a can of water. Taking it to be a normal one, he did not suspect any foul play and moved ahead. In the night, on hearing the weeping of the mother and the prosecutrix he went to her house where the incident of sexual assault on the victim by the appellant was narrated to him.

P.W. 4 Dr. Ram Pravesh Prasad, P.W.5 Dr. Arun Kumar and P.W.6 Dr. Kamini Rai had constituted the Medical Board which examined the victim on 28.04.2013. They have proved their respective report(s) as Exts. 1, 1/1 and 1/2 respectively.

P.W. 7 Sudhir Kumar Yadav has stated in his examination-in-chief that at the relevant time i.e. 6.30 P.M. he was coming from the market. He saw the victim at the hand pump near Peer Baba Asthan. She disclosed to him that after giving water to the appellant she would go home. In the morning he learnt about the incident.



P.W. 8 Ratan Yadav is the father of the victim to whom the P.W. 10 (victim) had gone to provide food in the afternoon. He has stated that he had come to the field earlier in the afternoon with food which he ate at about 4 o' clock. His daughter remained there for some time and then she proceeded towards home at about dusk time. On getting information of the incident he winded up his threshing work and came to the house at about 9. P.M. when his wife disclosed to him the entire incident. In the morning the police arrived and the Fardbayan of the victim was recorded. He along with his wife became attesting witness (s) to the Fardbayan.

P.W.9 is the mother of the victim. According to her, the victim in the afternoon had gone to Navtolia Chaur (Bahiyar) to provide food to her father. While returning home the appellant deceitfully captivated her near Peer Baba Asthan and after dragging her to the nearby wheat field committed rape on her. The victim on reaching home revealed to her the entire incident. She could see the private part of her body bleeding.

P.W. 10 is the prosecutrix herself who in her examination-in-chief has fully supported the prosecution case, as disclosed by her in the Fardbayn as also in her statement made on 13.05.2013 under section 164 Cr. P.C recorded by P.W. 11.

P.W. 12 Mukesh Kumar conducted the investigation and later made over the charge to P.W. 13 who submitted the charge-sheet. He has proved his signature on the charge-sheet (Ext 2/4).

Learned amicus curiae has submitted that in a case of such nature, the primacy is given to the evidence of the prosecutrix. After placing before us her cross-examination, it is submitted that she has not supported the prosecution case and put up a different story inconsistent with her



examination-in-chief. There is no corroborative evidence on record. The doctor (P.W.6) in her report (Ext.1/2) found no injury on any part of her body. The hymen was found intact. The doctor opined, on the basis of the findings, that there was no evidence of rape found on the victim. It is submitted that in such circumstance the uncorroborative evidence of P.W. 10 cannot legally provide a basis for conviction of the appellant. He also argued that the evidence of the child witness would require corroboration. To support the contention, he relied on **State of M.P. vs. Ramesh (2011 Cr. L.J.2297)**.

Mr. S.N.Prasad, learned APP, conversely, supported the impugned judgment. He would argue that the court, in such case, should apply the test whether the story given by the prosecution prima facie inspires confidence. All the relevant prosecution witnesses including P.Ws 1,3,8 , 9 and 10 in their respective examinations-in-chief have fully supported the prosecution case. P.W.12 while inspecting the place of occurrence found the wheat field trampled. Their evidence unerringly prove the prosecution case beyond shadow of doubt.

Before the rival contentions are discussed, be it noted that in case of rape it is a well settled that the victim of sexual assault is not treated as an accomplice and as such, her evidence does not require corroboration from any other source including the evidence of a doctor. If the evidence of the prosecutrix and other attending circumstance prove the case even if the doctor who examined the victim did not find a sign of rape, the court shall accept the evidence of the rape victim. It has a social philosophy. A victim of sexual assault normally does not like to disclose such offence even before her family members. There is a general tendency to conceal such



offence because it involves her prestige and honour as well as the prestige of her family. It is a common knowledge the victim girl or her family members, only in few cases, display courage to go before the police and lodge the case.

Both the appellant and the victim are the residents of the same village. The appellant was well known to her. In the evidence of the father it has come that the field where he was engaged in agricultural operation (threshing) on the relevant date was 4-5 kms. He has also supported the prosecution case that the victim left the Bahiyar late in the afternoon when the sun was about to set. The evidence of P.Ws.1,2 and 3 also proves the time of occurrence and the place of occurrence. It is pertinent to note here that the I.O. had visited the place of occurrence and found part of the wheat field grossly trampled. The defence has argued that the father waited the whole night before presenting the prosecutrix before the police on the next morning for recording her Fardbayan. This is a circumstance which throws a serious doubt on the prosecution case. On going through the evidence it is seen that the father reached the house after 9.00 P.M. The police station is 4-5 kms away from the village. The following morning on getting information about the incident the police arrived and recorded the statement of the victim at 8.30 A.M. which was promptly transmitted to the court on the same day. The family background of the prosecutrix is rustic. The evidence of father (P.W.8) and mother (P.W.9) reflect the same. Non travelling to a distance of 5 kms in the late night is not a very unusual circumstance to doubt the prosecution case on this score.

It has been hammered by learned amicus curiae that the prosecutrix herself in course of cross-examination has not supported the



prosecution case. She has narrated a story which reasonably explains receiving her some bodily injury and getting her apparel smeared with mud. In her such cross examination she has stated that it was the appellant who helped her out and brought to home. The evidence of the prosecution cannot thus be relied solely with their being any corroboration. We have minutely perused the evidence of the father (P.W.8) and the mother (P.W.9). The victim had first disclosed the incident to her mother (P.W.9) who narrated the prosecution case to her husband (P.W.8). They have consistently supported the prosecution case. There is no material contradiction in their evidence drawn by the defence. The mother has also stated that she got her undressed and found her undergarment spotted with stains of blood. Her private part was bleeding. The victim had received superficial injury on her body. The I.O. was made available the undergarment of the victim which he actually seized. The I.O., however, did not take any further steps in this regard. It is a blatant lapse on the part of the I.O. for which the prosecution should not suffer. On going through the evidence of the I.O., it is manifest that in course of investigation the prosecutrix, her mother and father had supported the prosecution case. The evidence of P.Ws 1,2 and 3 corroborates part of the prosecution case, insofar as the time and place of occurrence and the presence of the appellant at the scene of occurrence during the relevant time is concerned. After going through the cross-examination of the victim we examined Ext.3 which has been proved by the Judicial Magistrate (P.W.11) who recorded her statement on 13.05.2013. The prosecutrix was firm in raising accusation against the appellant consistent with her first version made before the police. True it is that such statement is not substantive evidence but it can be utilized only to corroborate or contradict



the witness vis-a-vis statement made in Court (Ref: (2010) 6 SCC 736). The I.O. on inspecting the place of occurrence found the part of the adjoining wheat field trampled. The straws of the wheat crop may have saved the victim from receiving serious scratches on her body while subjecting to rape. Although in her cross-examination the victim has made some stray statements but to a suggestion of having falsely implicated the appellant in the crime she has clearly denied the same and asserted that it was wrong to say that no such incident had occurred with her.

Learned counsel for the defence has argued that the doctor did not find any sign of rape or violence on her body which completely rules out the perpetration of sexual assault on her. The hymen of the victim was intact. In our view, the contention of the defence is not well-grounded. Intactness of the hymen may be for diverse reasons. Such finding does not rule out commission of rape. Penetration is sufficient to constitute sexual intercourse. It may be noted that the appellant was also charged for having committed penetrative sexual assault on the prosecutrix punishable under the POCSO Act. There is nothing on record, even by way of suggestion, to demonstrate any plausible reason for false implication of the appellant.

The aforesaid facts evidencing from the record fully establish the credibility of the prosecution case. We do not entertain any doubt on the veracity of the prosecution case merely referring to the stray statements made by the victim in her cross-examination inconsistent with her examination in chief. The defence counsel has relied on Ramesh (supra) which deals primarily with the evidentiary value of the child witness. If it is shown to the Court with convincing evidence that the child witness was tutored, the Court may undermine his/her evidence. It was submitted that the prosecutrix



was tutored by the parents. Our attention was drawn to her cross-examination at page 50 of the brief. On going through her cross-examination, it is difficult to accept the said contention as she has only stated that while she was going to record statement under section 164 Cr. P.C. the village people had asked her to narrate the entire incident that occurred with her. It was natural. It is difficult to infer that she was tutored by the parents.

In a case of such nature, the Court should consider whether the story given by the prosecution inspires confidence. In exceptional circumstance, the Court can disbelieve the evidence of the prosecutrix. It is not one of those cases.

On an overall consideration of the evidence on record in the light of the criticisms made by the defence counsel we are satisfied the prosecution case is well proved beyond doubt. The judgment of conviction and order of sentence passed against the appellant do not warrant any interference.

The appeal fails. Dismissed.

(Kishore Kumar Mandal, J)

(Madhuresh Prasad, J)

HR/-

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