

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.194 of 2015

Arising Out of P.S. Case No. -41 Year- 2012 Thana -BAHADURPUR District- PATNA

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Ramesh Pandit son of Shri Bhagwan Pandit Resident of Village - Kulharia,
Police Station - Koilwar, District - Bhojpur.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Animesh Kumar Mishra, Amicus Curiae.

For the Respondent/s : Mr. S.A. Ahmad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 27-02-2017

None appears on behalf of appellant, Ramesh Pandit on account thereof, Sri Animesh Kumar Mishra, learned counsel has been requested to assist the court as an Amicus Curiae who, during course of argument properly assisted the court.

2. Appellant, Ramesh Pandit has been found guilty for an offence punishable under Section 376 of the IPC vide judgment of conviction dated 16.01.2015 and sentenced to undergo R.I. for ten years as well as fined Rs.10,000/- in default thereof, to undergo S.I. for six months vide order of sentence dated 20.01.2015 with a further direction of set off with regard to the period having undergone during course of trial under Section 428 of the Cr.P.C. by Additional Sessions Judge, IVth, Patna City, Patna in Sessions Trial No.72 of 2013 / 03 of 2014. The learned trial court also directed that in case fine amount is deposited, then in that event, the same be paid to the victim in lieu of compensation.



3. Instant case gives a sordid tale and further speaks how a protector became devil falling under grip of carnal impulse. Appellant is the step father while victim is the step daughter. (Name withheld). It has been alleged at her end by filing a written report on the date of occurrence itself i.e. 05.05.2012 at about 12:00 noon alleging inter alia that her family happens to be tenant in the house of Laleshwar Singh where she resides along with her sister, brothers, mother along with step father, Ramesh Pandit. Her mother and brother used to go outside in order to earn their livelihood. She along with her younger sister used to remain at her house. Today i.e. on 05.05.2012 at about 06:00 AM while her mother and brothers have gone, her step father Ramesh Pandit came inside the room, undressed her and began to commit rape. After satisfy his lust, he threatened that in case of disclosure to anybody, she will be murdered. She remained static. After arrival of her mother as well as brothers, she revealed whereupon, she has been taken to police station by her mother.

4. On the basis of the aforesaid written report Bahadurpur P.S. Case No.41/2012 was registered against appellant where upon investigation commenced and after concluding the same, charge sheet was submitted which, happens to be basis of the trial that has ended in recording conviction and imposition of sentence against the appellant as indicated above, hence this appeal.

5. The defence case, as is evident from mode of cross-



examination as well as statement recorded under Section 313 of the Cr.P.C. is of complete denial of the occurrence. Even admitting his status to be that of step father, it has been suggested that at the instance of PW.2, her mother, victim has put false acquisition against him in order to squeeze money and for that, instant case has been registered. However, neither any DW nor any sort of paper has been made an exhibit on behalf of appellant.

6. In order to substantiate its case prosecution had examined altogether six PWs out of whom PW.1 is Laleshwar Singh, PW.2 is Pramila Devi mother of victim, PW.3 victim, (named withheld), PW.4 Raju Sao, PW.5 Chandradeep Mandal/Investigating Officer, PW.6 Dr. Aarti Kumari who had examined the victim. Side by side had also exhibited formal FIR Ext/1, Endorsement on the fardbeyan Ext.2, Endorsement of Deputy Superintendent of Guru Govind Singh Hospital, Ext.3, Injury Report-Ext.3/1.

7. While assailing the judgment of conviction and sentence impugned, it has been submitted that there happens to be delay in launching instant case considering the distance in between place of occurrence and Police Station covering half kilometer only. Furthermore, it has been submitted that the evidence of prosecutrix does not inspire confidence because of the fact that (a) in spite of having specific averment that remarriage of PW.2 had effected after three years of death of first husband and during intervening period, in spite of sharing



room by all the family members appellant not at all castigated at the end of the victim, (b) the narration as indicates in pre-arranged plan the whole thing visualized, (c) there was no whispering, alarm, weeping even after the occurrence what to talk about during course of occurrence attracting the neighbours which, as is apparent the house in question was being occupied by ten tenants. Even having the apparel retained by doctor or Investigating Officer whoever may be, not been subjected to chemical examination which would have, revealed with regard to presence of semen corroborating commission of rape. So submitted that the evidence of victim did not inspire confidence and on that very basis, her evidence is fit to be rejected. Now coming to the remaining witnesses, it has been submitted that neither PW.1 nor PW.2 nay PW.4 are eye witness to occurrence. More particularly, PW.1 and PW.4 have not supported the case of the prosecution. Now coming to the evidence of PW.5, it has been submitted that even during course of objective finding of the P.O., nothing has been found. So far PW.6 is concerned non-presence of spermatozoa in vaginal swab as indicated by the PW.6 if taken together with the infirmities as exposed hereinabove, will completely demolish the prosecution case. That being so, the judgment of conviction and sentence recorded by the learned lower court happens to be non-sustainable in the eye of law and is accordingly, fit to be set aside.

8. The learned Additional Public Prosecutor supporting



the finding recorded by the learned trial court and submitted that the learned trial court after meticulous examination of the evidences available on the record has recorded finding of guilt and sentence against the appellant whereupon, is fit to be concluded.

9. Coming to the status of the victim, the Hon'ble Apex Court times without number has considered the same and further held that the evidence of prosecutrix should not be brushed aside on superficial infirmities. Her evidence stood at upper pedestal than the injured witness and more particularly in Indian continent, where the victim of rape is seen adverse to her interest like she had committed a sin and, will cost her prestige and further, the societal attitude towards herself, first of all forbid her but having some sort of emotional support on that very score at the end of her near and dear dare to identify the wrong doer by way of launching a prosecution. The aforesaid exercise became more strenuous when the rapist happens to be her own family members, bread earner as well as who happens to be the aloft of the family.

10. In ***State of U.P. vs. Pappu @ Yunus & Anr.*** reported in ***(2005) 3 SCC 594*** at para-12, it has been held:

"12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and



emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice would do."

11. Recently in ***Hem Raj vs. State of Haryana*** reported in ***JT 2014(2) SC 399***, it has been observed:

"In a case involving charge of rape the evidence of the prosecutrix is most vital. If it is found credible; if it inspires total confidence, it can be relied upon even sans corroboration. The court may,, however, if it is hesitant to place implicate reliance on it, look into other evidence to lend assurance to it short of corroboration required in the case of an accomplice. (State of Maharashtra v. Chandraprakash Kewalchand Jain [JT 1990 (1) SC 61:1990 (1) SCC 550]: (AIR 1990 SC 658)]. Such weight is given to the prosecutrix's evidence because her evidence is on par with the evidence of an injured witness which seldom fails to inspire confidence. Having placed the prosecutrix's evidence on such a high pedestal, it is the duty of the court to scrutinize it carefully, because in a given case on that lone evidence a man can be sentenced to life imprisonment. The court must, therefore, with its rich experience evaluate such evidence with care and circumspection and only after its conscience is satisfied about its creditworthiness rely upon it."

12. In ***Raju & Ors. vs. State of Madhya Pradesh***



reported in **(2008) 15 SCC 133**, it has been held:

"9. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court."

13. Though, as is evident from the evidence of PW.2 as well as PW.3 that no delay is found in launching the prosecution in the background of the fact that from the remark of the court relating to PW.3, prosecutrix it is apparent that she happens to be handicap, even unable to stand, then in that event, her physical infirmity was very much obstacle in her free movement and the same was based upon the activity of her mother who, at that very moment, was not at all present at the spot as had gone to cook the food and the said PW.2, mother after her return and further having coming across the incidence of rape from the mouth of PW.3 the prosecutrix, lifted her and then carried her to P.S. in her Lap. Even then the aforesaid theme relating to rape case has been considered by the Hon'ble Apex Court in **State of Himachal Pradesh vs. Prem Singh** reported in **(2009) 1 SCC 420**.

"6. So far as the delay in lodging the FIR question is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before



coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FI R . In that score, learned counsel for the appellant is right that the High Court has lost sight of this vital distinction. Additionally, we find that the prosecution has clearly established commission of offence punishable under Sections 354 and 506 I PC. So far as the offence punishable under Section 376 I PC is concerned, the basic ingredients are set out in Section 375 I PC. On a reading of the evidence of the prosecutrix, we find that a case of rape has not been established so far as the respondent is concerned."

14. In the aforesaid background now the evidences having been adduced on behalf of prosecution is to be taken note of.

15. PW.1 is the landlord who though had not substantiated the factum of rape nor he claimed to be a hearsay witness but admitted presence of prosecutrix as well as accused being his tenant and further, when he came to his house for taking meal, he found police and then he came across with the news that victim was raped by her step father. However, there happens to be remark of the court over his conduct and for that, in stead of sitting idle the court was very much empowered to proceed against him. Even during cross-examination, stated that he has got no personal knowledge regarding occurrence nor the victim nay her mother had disclosed to him regarding the occurrence.

16. PW.4 is another tenant Raju Sao who was declared



hostile by the prosecution as he failed to stick over his earlier version whereunder he had supported the case of the prosecution.

17. PW.2 is Pramila Devi, mother, who had stated that when she returned back after discharging her duty, her daughter had disclosed that she was raped by her step father and during course thereof, whenever she tried to raise voice, her mouth was gagged. After saturation of his carnal desire she was threatened of dire consequences in case, she would inform anybody. She had further stated that she was married with Munna Sao, from whom she was four children, two sons and two daughters. Three years after death of Munna Sao she again married with the accused Ramesh Pandit. She took the victim to P.S. where written report was prepared and filed. Victim was subsequently medically examined. During cross-examination it is evident from para-6 that she used to go every day for doing job. On the alleged date at about 6 AM while she was going to work, at that very time Ramesh Pandit was awakened while victim was sleeping. Her two sons have already left with *thela*. Younger daughter had accompanied her. She had further stated that they all used to sleep in a same room. In para-7 she had stated that at the relevant time of occurrence, accused was not at all employed. In para-9 she had stated that when she came back no other was present. When she came to know with regard to occurrence then, thereafter, others came. In para-12 she had said that she lifted the victim and then taken to P.S. At P.S. the



police had recorded statement of victim as well as her. Then thereafter victim was sent to Guru Govind Singh Hospital where she also accompanied. Thereafter, victim remained at P.S. while she returned back. Juli was discharged from the P.S. after 2-3 days.

18. PW.3 is the victim. She had narrated that on the alleged date and time of occurrence while she was sleeping in a room, Ramesh Pandit came, pulled her pant and then committed rape. At that very moment he had gagged her mouth. He had also threatened that in case she would say anything regarding the occurrence, she will have to face dire consequences. After return of her mother, she disclosed the whole event whereupon she took her to police station where on her statement, written report was prepared. Then thereafter, she was sent to hospital and then to PMCH. During cross-examination at para-3 the court had recorded the physical condition of the victim suffering from deformity as unable to stand and move over her leg. During cross-examination, it is further evident that she has been subjected to rigorous cross-examination on all aspect. In para-7 she had categorically stated that her pant was pulled while she was sleeping. On pulling of pant she awake. She tried to raise alarm but was gagged. In para-8 she had stated that accused had committed rape for 10-15 minutes since thereafter, she remained static till arrival of her mother. She had further stated that after committing rape Ramesh had gone, else where.



19. PW.6 happens to be the doctor who had examined the victim and found injuries over her person as well as her private part was also examined. Though vaginal swab shown absence of spermatozoa but for that the doctor had opined that on account of long interval, such eventuality visualized and further, she was subjected to rape. The doctor has also found other injuries on the body of Juli Kumari (Victim).

- i. Multiple abrasion on Rt. Forearm of varying size from 3"x4"
- ii. Abrasion left forearm 3" x 4" x 1/2"
- iii. Swelling Rt. Wrist 3" x 2 1/2".

20. PW.5 is the Investigating Officer who being entrusted with the investigation, took statement of mother of the victim, also took further statement of the victim. For her medical examination, she was sent to Guru Govind Singh Hospital and then, thereafter, she was produced at PMCH on account of having been referred. He had visited place of occurrence which happens to be one of the room taken on rent by the prosecution as well as accused belonging to Laleshwar Singh. Then, after completing investigation submitted charge sheet. Attention of witness Laleshwar and Raju have been drawn up. During cross-examination, it is evident that nothing substantial has been found.

21. On account of absence of spermatozoa would not negativate the factum of rape. As held by the Hon'ble Apex Court in ***Narayanamma (Kum) vs. State of Karnataka & Ors.*** reported in ***(1994) 5 SCC 728.***



22. After minutely observing the evidences having adduced by the prosecution, it is apparent that prosecution has succeeded in proving its case beyond all reasonable doubt. consequent thereupon, the finding so recorded by the learned trial court on that very score is affirmed. As a result. Appeal is dismissed. So far sentence is concerned, considering the *inter se* relationship, appellant does not deserve any sort of leniency.

23. From the evidence as discussed above it is evident that victim happens to be handicap and further, been victim of rape committed by none other than her own step father who at that very time was the head of the family. Though, there happens to be no evidence on the record regarding social, economical, emotional condition of the victim and in case, is being indulged at this level will frustrate the Bihar Victim Compensation Scheme, 2011. Furthermore, it is also apparent that though learned trial court had fined Rs.10,000/- which, in case so paid would be paid to the victim in lieu of compensation, would not serve the purpose and that being so, the matter is being referred to the District Legal Service Authority, Patna who will inquire into the matter whether any compensation had been paid to the victim or not at an earlier occasion relating to the present offence and in case, is found that she has not been paid compensation then condoning the delay in terms of Rule-7 will immediately provide the same as well as communicate this Court. Appellant is under custody, hence will remain till saturation of the sentence.



24. Office is also directed to pursue the matter on that very score.

25. The first page and the last page of the judgment would be also handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	N.A.F.R.
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