

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.709 of 2013

Arising Out of PS.Case No. -38 Year- 2010 Thana -BACHWARA District- BEGUSARAI

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1. Rajesh Rai @ Rajesh Kumar @ Rajesh Kumar Rai S/O Kailash Rai Resident Of
Village Chama Dan Rani, P.S- Bachhawara, District- Begusarai.

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jai Prakash Singh, Advocate

For the Respondent/s : Mr. Z. Hoda (APP)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

C.A.V. JUDGMENT

Date: -06-2017

This appeal is directed against the judgment dated 27.08.2013 and order of sentence dated 30.08.2013, passed by Shri V.N. Lal Srivastava, learned Additional Sessions Judge-I – cum-Special Judge, Begusarai, in Sessions Trial No. 517 of 2010, by which he has convicted appellant under Section 376 Indian Penal Code and sentenced him to undergo R.I. for ten years as well as fine of Rs. 20,000/- (Rs. Twenty Thousand) 3/4th of which amount to be paid to victim for the pain and trauma, suffered by her during the course of inhuman offence of commission of her rape and further in default of payment of fine, appellant was directed to undergo S.I. for one year. The period undergone by the convict-appellant was directed to be set off from the period of sentence awarded to him. It further appears from the judgment and order that appellant has been acquitted under Section 3(i)(xii) of SC/ST (Prevention of Atrocities) Act.



Prosecution story as per fardbeyan of Dilip Paswan, (P.W. 2) in short is that on 09.03.2010, his sister in law (*saali*) Chandani Kumari, aged about eight years went with him to Dulalpur Diyara for extracting the potato from the field and on return, she left behind and, thereafter, he heard a cry and rushed towards that place and saw the appellant fleeing away and also found the victim bleeding profusely and she informed him that appellant committed rape on her. Thereafter, she was taken to Doctor P.K. Das for treatment, where the saline was administered to her and, thereafter, she was taken to the police station.

On the basis of the fardbeyan of the informant, formal F.I.R. was drawn being Bachwara P.S. Case No. 38/10 dated 30.03.2010 under Section 376 of Indian Penal Code and Section 3(x) of SC/ST (Prevention of Atrocities) Act. After investigation charge-sheet has been submitted against the appellant under Section 376 Indian Penal Code and under Section 3(x)(xi)(xii) of SC/ST (Prevention of Atrocities) Act. Thereafter, cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of Shri V.N. Lal Srivastava, learned Additional Sessions Judge-I – cum- Special Judge, Begusarai, for trial and disposal.

In this case charges were framed against the appellant under Section 376 Indian Penal Code as well as under Section 3(i)(xii) of



SC/ST (Prevention of Atrocities) Act.

No specific defence has been taken by the appellant, however, as per examination of the witnesses and the statement of appellant under Section 313 Cr. P.C. it appears, that the defence of the appellant is of total denial of occurrence and of innocence.

Learned Trial Court after conclusion of Trial convicted the appellant under Section 376 Indian Penal Code and sentenced him as stated above. However, he has acquitted the appellant from charge under Section 3(i)(xii) of SC/ST (Prevention of Atrocities) Act.

Being aggrieved by the Judgment and order, the present appeal has been preferred by the appellant.

Learned counsel for the appellant has assailed the judgment on the ground that though the victim girl P.W. 1, has stated in her evidence in chief that occurrence is of at about 1.30 P.M. but the F.I.R itself shows that informant has come with a case that occurrence took place in the evening and as such there is vital contradiction between the F.I.R and the statement of the victim girl with regard to time of occurrence. Further submission of learned counsel for the appellant is that according to the evidence of P.W. 2 - informant and other witnesses, it is apparent that the girl was taken to Doctor P.K. Das for her treatment and there the police was called and statement was recorded but the aforesaid statement has not been brought on record, which is the first statement in this case nor doctor P.K. Das, has been



examined in this case and that creates a shadow of doubt on the entire prosecution story. It has also been submitted by learned counsel for the appellant that according to prosecution case the victim girl had come to the house of his brother-in-law (*Jija*) just before a month and as such, she was not knowing the appellant from before and in such a situation the identification of the appellant by the victim girl, is itself doubtful and even Test Identification Parade Chart has not been brought on record. All the above facts falsify the prosecution version and the learned Trial Court without considering the above facts, convicted the appellant, which is not sustainable in the eye of law.

On the other hand, learned counsel for the State has submitted that in this case victim has been examined as P.W. 1 and she has supported the prosecution version with regard to commission of rape on her in her evidence in court, which has been corroborated by her statement recorded under Section 164 Cr.P.C. Her statement further found corroboration from the medical evidence. It has also been argued that the victim girl has identified the appellant in Test Identification Parade and that is on the record. No doubt it cannot be marked as an exhibit in this case but the fact remained that she has identified the appellant and she has also identified him during the course of evidence in court. Further, there is nothing on the record to suggest as to why the victim girl, who is a minor girl aged about 9-10 years would depose falsely against the appellant. On the other hand,



there is ample material available on record to show that appellant committed rape on the victim girl and that fact has been supported by other witnesses also. Hence, conviction of appellant under Section 376 Indian Penal Code is just and proper and does not require any interference.

Having heard both sides, for proper adjudication of the case, let me first examine the evidence of witnesses. From the prosecution side altogether nine witnesses have been examined and they are; P.W. 1 – Chandani Kumari (victim girl), P.W. 2-Dilip Paswan (informant), P.W. 3-Ram Khelawan Sah, P.W. 4- Dr. Asha Kumari, P.W. 5 - Dr. Akhilesh Kumar, P.W. 6-Smt. Parwati Devi, P.W. 7- Rajesh Sharan (I.O. of this case) P.W. 8-Dr. Arun Kumar and P.W. 9- Smt. Mamta Devi.

Apart from the above following documents have been brought on record and marked as exhibits.

Ext. 1. Signature of Victim Chandani Kumari on the statement recorded under Section 164 Cr.P.C, Ext. 2 and 2/1 Medical Examination Report of Chandani Kumari, Ext. 2/1 Medical Report of appellant-Rajesh Kumar, Ext. 3 Fardbeyan, Ext. 4 Formal F.I.R., Ext. 5 Seizure list and Ext. 6 requisition sent for medical examination.

P.W. 2 is the informant in this case, who happens to be the brother-in-law (*Jija*) of the victim girl and he has supported the prosecution in his evidence in chief. His evidence in chief further



shows that on hearing the cry of victim girl-P.W. 1, he went there and found the victim girl bleeding profusely and, thereafter, he took her to house and changed her clothes and thereafter had taken her to the Doctor P.K. Das for her treatment, where the police was informed. In his evidence in chief, he also claimed that he saw the appellant fleeing away from the place of occurrence. In his cross-examination in para - 3, he has stated that while he was coming from Dularpur Diyara, he heard a cry of a baby and he went there and saw the appellant committing rape on the victim girl. However, it appears that this fact was not disclosed by him in his very first statement recorded before the police that he saw the appellant committing rape on the victim girl, as such, it appears to be an improvement in this case. In his cross-examination, this witness has also stated that *Daroga ji* was called by the Doctor P.K. Das and *Daroga Ji* recorded his statement and statement of victim girl but he has categorically stated in para -6 that in the night, he has brought the victim girl to Sadar Hospital at about 10 P.M. but she was not conscious and she regained consciousness at 9 A.M. and, thereafter, her statement was recorded and it further appears from the F.I.R. itself that his fardbeyan was recorded on 10.03.2010 at 1.20 'O' Clock as such though there are some discrepancies about recording of his first statement but his cross-examination in para -6 clearly shows that at 1.20 'O' Clock in the night, his statement was recorded by the Bachwara police. It has



been argued on behalf of the appellant that very first statement, which has been recorded by the police at the clinic has not been brought on record but it appears from para – 6 of cross-examination of this witness, that he has clearly stated the he has come in the hospital in the night and the statement of the victim girl was recorded at 1.20 ‘O’ Clock. No doubt he has stated in his statement that his statement and statement of victim girl was recorded in the clinic of Doctor P.K. Das but being an illiterate, he could not understand the intricacies and technicalities, hence stated so. From further perusal of evidence of this witness, it appears that there is nothing in his evidence to show as to why he would depose falsely against the appellant in this case and further there is nothing on record to suggest that there was enmity between the parties from before. Furthermore, I.O. P.W. (P.W. 7) has not been cross-examined about any earlier statement of P.W. 2.

P.W. 1 is the victim girl in this case and she has supported the prosecution case in her evidence in chief and stated that she was taken to maize field and there the appellant committed rape on her and, thereafter, P.W. 2 came there, who brought her to the police station. She also identified the appellant in dock. This witness has been cross-examined at length and she has admitted that she does not know anyone of the village *Rani Tola* and village *Chamuvan* and she has also admitted that she does not know that on whose field, she has gone to extract the potato. Even her cross-examination in para -6,



discloses that one person came and tied her mouth and committed rape on her, due to which, she became unconscious. From perusal of her entire evidence, there is nothing in her evidence to suggest as to why, she would depose falsely against the appellant or to disbelieve the version of this witness. The evidence of P.W. 1, found corroboration from her statement recorded under Section 164 Cr.P.C., which is ext. 1, and the same has been recorded on 11.03.2010, which is two days after the occurrence.

P.W. 4 is Doctor Asha Kumari, one of the members of Medical Board, who examined the victim girl on 10.03.2010 at 8.15 and she has found :

- (1) Secondary sexual character, axillary and pubic hair not present.
- (2) Breasts not developed.
- (3) no visible external injuries found in front and back.
- (4) Vulva and thigh stains with blood clots.
- (5) Hymenal teared and extended second degree perennial tear present.
- (6) Vaginal tear present.
- (7) Urethra and anal canal not injured.
- (8) A blood clot with one hair found over vulva and preserved in glass jar for further examination.
- (9) Swab taken for spermatozoa examination, spermatozoa



found in pathological examination with pus cells and red Cells.

(10) Vaginal tear repaired under I.V. anesthesia. Length of vaginal tear was 3” long upto cervix.

(11) X-ray mandible, pelvis, wrist and knee were advised for radiological determination of age.

She has opined that evidence of Rape is found.

She further stated that she prepared the medical report and proved the same as ext. 2. Even in her cross-examination in para -6, she has stated that vaginal swabs of the victim was taken for confirmation of presence of spermatozoa and in para -7 she has stated that she has given her opinion after getting slid report from pathological department. Hence the evidence of expert witness P.W. 4 also corroborates the prosecution story so far commission of rape on the victim girl is concerned.

P.W. 5 is the Doctor Akhilesh Kumar, who examined the appellant and found following;

(1) Height – 5’ 10”, Weight – 55 KG. Build- average,

moustache, beared well developed, hairs over chest,

availability of pubic hairs coarse and thick.

(2) Penis testis –well developed.

(3) No foreign substance e.g. semen, blood clot, broken hair, fecal matter found over the penis, scrotum, medial side of



thigh, perineum.

(4) Free play of Preputial skin over glans with absence of smegma, indicates habitual for sexual intercourse.

(5) No bruise/abrasion over gland, and granular region found. Only second hyperemia external mutus seen.

He has also stated in his evidence that on the basis of above physical and radiological findings the age of appellant was found to be between 24 to 25 years. In his cross – examination, he has stated that Hyperemia means redness, it may occur by rubbing of glans with rough clothes etc. Further evidence of this witness also shows that slight hyperemia of external mucus was seen during the examination of appellant.

So far other witnesses are concerned, P.W. 3, P.W. 6 and P.W. 9, though are not the eye witness of the occurrence but their evidence also shows that soon after the occurrence, they saw the victim bleeding profusely and, thereafter, the victim was taken to hospital. As such the aforesaid evidence supports the prosecution version that a rape was committed on the victim girl.

P.W. 8 is Doctor Arun Kumar has examined the victim girl for determination of her age and he has stated that the age of victim girl was found to be between 9 to 10 years and he has proved the ext. 2/1, the report. This witness has not been cross-examined by the defence.



P.W. 7, is the Investigating Officer of the case and he has stated that on 10.03.2010, he recorded the fardbeyan of P.W. 1 on the basis of which case was registered and he has proved the same as ext. 3 and also proved the formal F.I.R as ext.. 4. His evidence also shows that he has seized the cloth of victim as well as *lungi* of the appellant, which has been produced by Dinesh Paswan, elder brother of P.W. 2 and prepared production-cum-seizure list and proved the same as ext. 5. He has also proved the requisition for medical examination as ext. 6. He has also stated the he has examined the place of occurrence, which is situated at Ranitola at about 100 yard south of pitch road and is a maize field of Mukesh Rai. He has further stated that at the place of occurrence, he has found maize crop was of about six fit and field was wet and he has found the sign of occurrence there and also found that maize crops in damaged condition. His evidence also shows that he sent the cloth of victim for forensic examination and conducted Test Identification Parade, in which the victim girl identified the appellant, thereafter, he has submitted charge-sheet.

From the evidence of this witness also, it appears that he has found the mark of violence at the place of occurrence, which also corroborates the prosecution case. Further examination of appellant also shows that slight hyperemia of external was seen.

In this case, it has been argued on behalf of the appellant that there is nothing available on the record to show as to how the victim



has identified the appellant. However, the I.O. has stated that he has conducted the Test Identification Parade of the appellant and in the said Test Identification Parade victim identified the appellant. No doubt the aforesaid Test Identification Chart has not been brought on record as an exhibit but that is available on record and apart from that P.W. 1, the victim girl has also identified the appellant in the Court.

From perusal of the entire discussions made above, it clearly appears that the appellant has committed rape on the victim girl – P.W. 1 and there is nothing available on record to show that there was any motive for the prosecution party to implicate the appellant falsely in the present case. On the other hand, the evidence of P.W. 1, the victim girl, who is aged about 9-10 years at the time of deposition, shows that a rape was committed on her and the evidence of P.W. 4, doctor, clearly shows that vulva and thigh stained with blood clots and Hymenal was teared and extended second degree perennial tear was present. Further a blood clot with one hair was found over vulva and the same was preserved in glass jar for further examination. Spermatozoa was found in pathological examination with pus cells and red cells. Vaginal tear was repaired under I.V. anesthesia and the length of vaginal tear was 3” long upto cervix. The report further shows that evidence of rape was found.

Hence so far conviction of appellant under Section 376 Indian Penal Code is concerned, there is enough cogent and consistent



materials available on record so as to prove the guilt of appellant. As such so far conviction of appellant under Section 376 is concerned, the same does not warrant any interference by this Court.

Accordingly, this appeal is dismissed. Judgment dated 27.08.2013 and order of sentence dated 30.08.2013, passed by Shri V.N. Lal Srivastava, learned Additional Sessions Judge-I – cum-Special Judge, Begusarai, in Sessions Trial No. 517 of 2010 is hereby affirmed.

(Vinod Kumar Sinha, J)

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