

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.294 of 2011

Arising Out of PS.Case No. -120 Year- 2009 Thana -Sakara District- MUZAFFARPUR

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Sonu Kumar Poddar, son of Rakesh Poddar, resident of village Mohanpur, Cycle Chowk, P.S. Sakra, District-Muzaffarpur

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Anil Kumar Singh, Advocate
Mr. Surinder Kumar, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

and

HONOURABLE MR. JUSTICE SANJAY KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SANJAY KUMAR)

Date: 20 -01-2017

1. Minor daughter of the informant had gone to the nearby orchard to collect fire wood when the appellant is alleged to have over powered her and committed rape on her in the nearby ditch. The appellant was, therefore, charged under section 376 of the Indian Penal Code. By the judgment of conviction dated 22nd February, 2011 and order of sentence dated 25th February, 2011, passed in S.T. No. 775/2009, the learned Additional Sessions Judge, Fast Track Court No. IV, Muzaffarpur found him guilty of having committed rape on the victim and sentenced to undergo rigorous imprisonment for life. He was also imposed a fine of Rs. 10,000/- in default of payment thereof, he was additionally



sentenced to undergo S.I. for one month. Aggrieved by the aforesaid judgment and order passed by the learned Trial Court, the present appeal has been preferred by the sole appellant.

2. On 19.4.2009, a written report was submitted by Bhulan Sah (P.W.-8) before the Officer-in-charge, Sakra Police Station alleging that on 19.04.2009 at about noon, his daughter Komal Kumari had gone to collect fire wood in the nearby orchard which is adjacent to jungle and ditches. As she was collecting the fire wood, the appellant who has house close to the place of occurrence, finding her alone in the orchard, caught and forced her to the nearby ditch and committed rape on her. Scream and cry of the victim attracted attention whereafter the informant along with his wife Rekha Devi (P.W.-6) and other co-villagers rushed to the place of occurrence to see that the appellant was fleeing therefrom and the victim was weeping while lying in the ditch. She disclosed to the informant about the incidence whereafter the victim was carried to the police station where a written report prepared by Arjun Kumar after affixing his L.T.I. in presence of Rekha Devi (P.W.-6) Lakhan Sah (P.W.-7) and Ram Chandra Sah (P.W.-1) was filed whereupon a formal F.I.R. was drawn vide Sakra P.S. Case No. 120 of 2009 under section 376 of the Indian Penal Code. Vide endorsement of the S.H.O. (Ext.2A) upon registration of the



case, the investigation of the case was assigned to the Investigating Officer (P.W.-9). The victim was sent to the Sri Krishna Medical College and Hospital (S.K.M.C.H.) for her medical examination. The I.O. immediately inspected the place of occurrence and recorded the statement of the witnesses including P.Ws. 1, 2, 3, 4, 5, 6, 7 and 8. The undergarments of the victim presented by the informant were also preserved by the I.O. and later sent for its analysis by the Forensic Science Laboratory after obtaining the order from the Court. After receiving the medical report of the victim and concluding the investigation he submitted charge-sheet against the appellant whereafter cognizance was taken and the case was later committed to the Court of Sessions for trial. The learned Trial Court framed the charges which were read out to the appellant. The appellant abjured the guilt. The defence is that he had not committed the offence and is innocent. Be it noted that some documents have been filed, in defence, by the appellant.

3. The prosecution, in order to prove the case, examined altogether 10 witnesses namely: P.W.-1 Ram Lal Sah, P.W.-2 Lal Babu Sah, P.W.-3 Manoj Sah, P.W.-4 Lakhan Sah, P.W.-5 Bhola Sah, P.W.-6 Rekha Devi, P.W.-7 Komal Kumari, P.W.-8 Bhulan Sah, P.W.-9 Ravindra Prasad Singh and P.W.-10 Dr. Vijay Pratap Singh. The learned Trial Court on analyzing the evidence held that



the evidence of P.W.-1, 2, 3, 4, 5 and 6 consistently supported the prosecution case as projected at the trial. P.W.-10 is the doctor who examined the victim Komal Kumari and submitted the report (Ext.-4) which too was analysed and it was found that the same supported the case.

4. Heard Mr. Anil Kumar Singh for the appellant and Mr. Shivesh Chandra Mishra, APP for the State.

5. Learned counsel for the appellant submits that the conviction of the appellant is contrary to the evidence on record. The learned Trial Court failed to consider that there is material contradiction in the evidence of the informant and his wife (P.W.-6) in so far as place where the written report was submitted. The medical report of the victim does not fully corroborate the prosecution case. The prosecution has attempted to interject new facts during the trial which was not disclosed in the first information report. The punishment imposed upon the appellant is quite harsh and excessive. Learned Trial Court only considered the severity of the charge but not the other mitigating circumstances on record.

6. Mr. Mishra, per contra, has urged that all the relevant witnesses have consistently stated before the Court about the time, place and manner of occurrence. The evidence of these witnesses



are consistent on the point that when they reached the place of occurrence, the appellant was seen fleeing from there after having committed the crime. The defence, according to him, has failed to draw any material contradiction in the evidence of these witnesses. The impugned judgment and order do not warrant any interference.

7. With reference to the above rival contentions urged on behalf of the parties, we have examined carefully the entire evidence on record with a view to find out the correctness of the finding recorded on the charge levelled against the appellant.

8. We find that the specific case of prosecution is that on hearing the scream of victim, informant (P.W. 8), his wife P.W. 6 along with villagers immediately reached at the place of occurrence where they saw the accused appellant running towards north after committing rape on the victim. P.Ws. 1, 2, 3, 4 and 5 are neighbours of the victim. They have consistently stated that they immediately reached at the place of occurrence and saw the victim lying in the ditch after being ravaged. Before going to police station they also visited the house of the accused where his father abused them. Out of them P.W. 1, 4 and 6 have witnessed the written report (Ext. 2) which was scribed by Arjun Kumar. The victim disclosed them about the manner of occurrence committed by the accused. The witnesses P.Ws. 1, 3, 4, 5, 6 and 8 have



visualized the blood on the thigh and under garment of the victim. The Investigating Officer (P.W.9) has stated that the victim was examined by Doctor at S.K. Medical College Hospital and her under pant (kachia) was also sent for forensic examination. The Doctor (P.W. 10) has reported that blood and bloodstains were found present in and around vulva that is opening of the vaginal canal. He further found posterior fornix ruptured and bruised. This witness P.W. 10, has not ruled out the possibility of sexual assault on her and assessed her age between 9-10 years on the basis of radiological examination.

9. We find that the evidence of witnesses are consistent on the charge of rape. All the witnesses are residents of same Tola situating adjacent to the place of occurrence and they all stood the test of their cross examination. Nothing has been shown in their cross-examination to discredit their testimony. The defence although asserted false implication on account of enmity but it failed to establish the enmity. The charge of rape finds full support from the evidence of Medical Officer and the Investigating Officer.

10. The learned counsel for the appellant, however, pointed out some discrepancy in the statement of witnesses examined in court and statement given before police as well as in written report. On careful examination we find that there is absolutely no material



variation in the statement of witnesses. The discrepancy as pointed out by the counsel are very minor and are of little consequence as the court is required to see the veracity of the evidence on record. The informant, his wife and neighbours are not expected to come forward in court to make a humiliating statement against the minor unmarried girl of such tender age even if they are nursing enmity or for any other reason. The overall evidence and the circumstances fully establish the charge of rape against the appellant and we have no hesitation in upholding his conviction recorded by the trial court.

11. The learned counsel for the appellant lastly questioned the quantum of sentence. According to him, taking note of various facts including the age of the appellant being 19 years (at the time of occurrence) social background, award of life imprisonment and a fine of Rs. 10,000/- with default clause was too excessive. The learned counsel cited ruling reported in 2012 (2) S.C.C. 684 in support of his contention that the court is free to impose appropriate sentence in terms of Section 376(2) of the Indian Penal Code. In the said case (cited above) the victim aged about 7 years was raped by the accused (19 years). The Hon'ble Apex Court while confirming his conviction, reduced the sentence of life imprisonment to R.I. for 10 years.



12. We have also examined the provision of Section 376(2)(f) of the Indian Penal Code which speaks about the punishment of rape. Sub-section (2) (f) makes it clear that whoever commits rape on a woman when she is under 12 years of age shall be punished with R.I. for a term which shall not be less than 10 years but which may be for life and shall also be liable to fine.

13. The above statutory provision, that, for the offence of rape on a girl under 12 years of age, punishment shall not be less than 10 years but which may extend to life. The appellant was aged about 19 years at the time of incident. In the case in hand, we find that none of the witnesses has complained about the antecedent or misconduct of the appellant on earlier occasion and this appears to be his first offence. We further notice that the manner in which the appellant committed the offence, it could have been a momentary lapse on his part seeing the victim in secluded place. There was no premeditation for commission of rape as it appears from the evidence on record.

14. So taking into consideration all the facts as also his age, the possibility and chance of his reformation cannot be completely ruled out. The appellant is in custody since 22.04.2009. So taking note of all these aspects appearing from record, we are inclined only to interfere with the quantum of sentence.



15. In view of the above discussion, the conviction imposed on the appellant herein is confirmed and appeal is dismissed. However, the sentence of life imprisonment imposed by the trial court is modified to R.I. for 10 years with a fine of Rs. 10,000/- in default, to further undergo S.I. for one month as ordered by court below.
16. With the above modification in sentence, the appeal stands dismissed.

(Sanjay Kumar, J)

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(Kishore Kumar Mandal, J)

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