

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.225 of 2013

Arising Out of PS.Case No. -30 Year- 2011 Thana -KURSELA District- KATI HAR

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Siko Singh S/O Budhu Singh Resident Of Village- Koshkipur, P.S.- Tikapaati,
District- Purnea

.... Appellant

Versus

The State Of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. V.D. Singh
Mr. Bijendra Kumar Singh
For the State Mr. S. N. Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

And

HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 06-03-2017

The sole appellant was charged under sections 376 and 511 as well as 377 IPC for having sexually assaulted/ravished 08 year-old-daughter (P.W.9) of the informant (P.W.7) while she was at the maize field in the evening of 10.03.2011 to cut grass. The learned Ad hoc Additional Sessions Judge-II, Katihar by his judgment of conviction dated 18.01.2013 passed in S.T. No. 189 of 2011 held him guilty under sections 376 and 511 IPC as well as section 377 IPC. By the order of sentence dated 22.01.2013 the appellant was sentenced to undergo R.I. for life under section 377 IPC and to pay a fine of Rs. 20,000/- with default clause. He was also sentenced to undergo R.I. for 10 years under section 376/511 IPC and was imposed a fine of Rs. 10,000/- with default clause. Both the sentences were directed to run concurrently.

2. On 10.03.2011, at about 9.00 P.M., the informant (P.W.7), presented a written report signed by him (Ext.1/4) before the Station House Officer, Kursela (P.W.13) that while the victim was cutting grass in Takua



Bahiyar along with her cousin (P.W.14) in the maize field of Janardan Mandal @ Chulahi Mandal (P.W.6), the appellant came there, overpowered the victim, scared away P.W.14 and thereafter she was taken into the maize field where she was subjected to rape/sexual assault. On Hulla, the witnesses arrived including Suresh Mandal (P.W.3) and with the help of his son Pramod Kumar Mandal (P.W.4) the appellant was overpowered. On such filing of written report, a formal FIR (Ext.5) was drawn and the investigation was set in motion where the victim was sent to the doctor for her medical examination. The SHO was also the I.O. of the case. He is said to have arrested the appellant on the same evening and the seizure of the undergarments of both the victim and the appellant was made in presence of Bhola Mandal (P.W.1), Pinku Ram (P.W.2) and Suresh Mandal (P.W.3). The following morning, he visited the place of occurrence and seized a **Gamcha** allegedly belonging to the appellant under seizure memo (Ext.9) in presence of P.W.5 and P.W.8. The undergarments of the victim and the accused were not sent for the forensic examination by the I.O. Those articles were, however, preserved in Malkhana and were produced as material exhibits at the trial vide Exts. I, II & III. On conclusion of the investigation, the charge-sheet was submitted/laid whereafter cognizance of the offence was taken and the case was committed to the court of sessions for trial which subsequently came on the file of the 1st Additional Sessions Judge where charges were framed on 13.07.2011 which were read over/explained to the accused. He abjured the guilt and claimed to be tried. The statement of the victim was recorded on 18.03.2011 which has been brought on record duly proved by P.W.11 as Ext. 3.

3. At the trial, the prosecution, with a view to prove the case beyond shadow of reasonable doubt, produced 14 prosecution witnesses. P.W.1 Bhola Mandal, P.W. 2 Pinku Ram, P.W. 3 Suresh Mandal, P.W.4 Pramod Kumar Mandal and P.W.14 Soni Kmari were produced as the eye-witnesses to the



occurrence. P.Ws 6, 7 & 8 are the hearsay witnesses. P.W. 10 is the doctor who medically examined the victim and proved her medical report (Ext. 2). P.W. 11 is the Judicial Magistrate, 1st Class who has proved the statement of the victim recorded by him. P.W.12 is a formal witness (police personnel) who has proved the material exhibit. P.W. 13 is the I.O. of the case.

4. On analyzing the evidence adduced at the trial, the learned trial court found and held that the charges framed against the appellant were proved beyond shadow of reasonable doubts and the appellant was convicted and sentenced in the manner stated above.

5. We have heard Mr. V. D. Singh, the counsel for the appellant as well as Mr. S. N. Prasad, APP for the State.

6. The commission of the crime at the hands of the appellant on the relevant date and time of the occurrence has not been challenged before us. We are, therefore, not delving deep into the evidence on record produced by the prosecution to prove that the occurrence was committed by the appellant on the alleged date, place and time of the occurrence. The evidence of P.W.2, P.W.3, P.W.4, P.W.9 (victim) read with the objective findings of the I.O. (P.W.13) clearly establishes that on the relevant date and time of the occurrence the appellant was present at the place of occurrence and finding the victim (P.W.9) alone with another small girl P.W.14, she was forcibly taken to the nearby maize field and after scaring P.W. 14 away, he sexually assaulted the victim. The learned trial court, on appraisal of the evidence particularly the statement of the victim, the objective findings of the doctor (P.W.10) and in the light of the other circumstances proved at the trial held that the appellant was guilty of having committed rape on the victim. However, considering the evidence produced at the trial, he was also held guilty under section 377 IPC.

7. On behalf of the appellant, it has been urged that on the strength of



the evidence on record, the conviction of the appellant under section 377 IPC is wholly uncalled for. The learned trial court erred in law in overlooking the evidence on record and convicted the appellant under section 377 IPC. The evidence produced by the prosecution to prove the charges under sections 376/511 IPC would also be fully applicable insofar as the charge under section 377 IPC is concerned. In this connection, our attention has been drawn to the medical report of the doctor (P.W.10) available on record as Ext. 2 wherein she has stated that no medical examination of the anus part of the victim was examined by her as the I.O. had not requested for such examination of the injury, if any, on her anus. In the written report which was lodged at least 04 hours after the occurrence it is not alleged that the victim was subjected to carnal intercourse against the order of nature by the appellant. We have carefully perused the evidence of the victim, the doctor and the I.O. The I.O., in his cross-examination, has stated that the victim has not stated about subjecting her to unnatural offence at the hands of the appellant. The doctor who could not find any injury sustained by the victim on her anus part has given an explanation in her evidence that as the I.O. did not request for examination of the anus part of the victim she did not examine the same and reported her finding to the I.O. This would create a doubt in the mind of the court. In order to lend assurance to us with regard to the said charge, we have cautiously perused the statement that was made by the victim under section 164 Cr. P.C. (Ext. 3) as well as her deposition in court. The victim in her statement under section 164 Cr. P.C. (Ext.3) has vividly explained the manner in which the appellant behaved with her on the relevant date. Similar statement has been given by her in course of her deposition as P.W.9. We cannot undermine the fact that the victim was a girl child of 08-09 years. There is nothing substantial on record even to suggest with some amount of credibility that there was any strained relationship between the



prosecution and the defence. It was a clear lapse on the part of the doctor in not examining other aspects of the criminal assault when it was reported her a case of rape on minor. The I.O. of this case, although has given explanation that in his understanding rape would include unnatural offence, in our considered opinion, he should have proceeded cautiously as he was dealing with the case of sexual assault on a child. The trial court has noticed and recorded the demeanor of the victim while she was deposing in the case. Her statement made under section 164 Cr. P.C. (Ext. 3) and evidence in Court as P.W.9 clearly gives an impression that an attempt was also made by the appellant to commit carnal intercourse against the order of nature on the victim on the relevant date and time of the occurrence. The evidence of the victim particularly if she is a child of tender age cannot be brushed aside for some lapses on the part of the prosecution. She has consistently stated both in her statement under section 164 Cr. P.C. as well as in her deposition that the appellant had made an attempt to commit unnatural offence on her. We find an element of truth in her statement. Nothing has been shown to us by the appellant to discredit her evidence.

8. In the light of the discussions made above, we find that the appellant was guilty of having committed offence punishable under sections 377/511 IPC besides the offence punishable under sections 376 and 511 IPC which was recorded by the learned trial court and no serious challenge thereagainst has been raised before us.

9. It is submitted that the appellant was in the prime of his life when the occurrence is said to have been committed and there is every likelihood of his settling well in the society and contributing productively to the society. It has further been submitted that there is nothing on record to suggest that the appellant has committed any such offence against the order of the nature previously. Conversely, it has been urged on behalf of the State that the



appellant is guilty of unnatural crime.

10. Considering all aspects of the matter, in our view, the ends of justice shall be subserved if the appellant is sentenced under both counts to serve R.I. for a period of 10 years. He shall also be imposed a fine of Rs. 10,000/- under sections 377 and 511 IPC in default of payment whereof he shall further undergo S.I. for 04 months. In case the fine is realized the same shall be payable to the victim. Both the sentence(s) imposed upon the appellant shall run concurrently.

11. With the aforesaid modification in the findings of judgment of conviction and order of sentence passed against the appellant, the appeal stands dismissed.

(Kishore Kumar Mandal, J)

(Sanjay Kumar, J)

HR/-

AFR/NAFR	NAFR
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