

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.214 of 2012

Arising Out of PS.Case No. -193 Year- 2011 Thana -null District-
WESTCHAMPARAN(BETTIAH)

=====

Nandu Sah, son of Sri Ram Chandra Sah, resident of village-Dhokraha,
P.S.Majhauria, District-West Champaran

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Shashi Bhushan Pandey, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

CAV JUDGMENT

Date: 11-04-2017

The present appeal has been directed against the judgment and order dated 27.2.2012/28.2.2012 passed by Sri Nand Kishore Prasad Gupta, Additional District and Sessions Judge, First Track Court-III, West Champaran, Bettiah in Sessions Trial No. 395 of 2011, arising out of Majhauria P.S.Case No. 193 of 2011, corresponding to G.R.No. 1909 of 2011, by which the sole appellant has been convicted under Section 376(2)(f) of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for 10 years and also imposed a fine of Rs.25,000/- and in default to undergo imprisonment for one year.

2. The prosecution case, in short, is that the informant Rinki Kumari (P.W.8) has lodged a fardbeyan (Ext.3) before



Majhauria Police Station stating, inter alia, that on 21.6.2011 at 8 A.M. while she was going to school on way, the accused appellant called her on the plea that her elder sister is there and when she went there and did not see her elder sister she enquired about her sister from the appellant of which appellant had caught hold her hand and forcefully dragged her and taken to his room and got her fell down and committed rape upon her, by putting cloth in her mouth and tiding her hands. It is also the prosecution case that due to forceful rape blood was oozing out from her private part and she was weeping because of pain and the appellant threatened her to dire consequence if she told anybody about the same. It is the case of prosecution, as per her fardbeyan, that appellant left the victim girl near her house and fled away.

3. On the basis of fardbeyan of the victim, Majhauria P.S.Case No. 193 of 2011 was registered against the appellant under Section 376(2)(f) of the Indian Penal Code and police after investigation submitted charge-sheet under the above section against the appellant. Thereafter cognizance was taken against the appellant and the case was committed to the Court of Sessions, which, ultimately came to the file of Sri Nand Kishore Prasad Gupta, Additional District and Sessions Judge, FTC-III for trial and disposal.

4. It appears from the perusal of the record that in this



case charge was framed against the appellant under Section 376(2)(f) IPC.

5. It further appears from the record that in course of trial altogether 11 witnesses have been examined on behalf of prosecution, they are Shubh Narayan Pandey (P.W.1), Brahmanand Pandey (P.W.2), Diwakar Pandey (P.W.3), Jagdish Narayan Pandey (P.W.4), Jai Narayan Pandey (P.W.5), Pradeep Kumar Pandey (P.W.6), Sangeeta Devi (P.W.7) (mother of the victim), Rinki Kumari (P.W.8) (the victim), Dashrath Prasad (P.W.9) (I.O.), Narendra Pal Singh (P.W.10) (Judicial Magistrate) and Dr. Meera Chaudhary (P.W.11).

6. Apart from that the following documents have been admitted into evidence on behalf of the prosecution:- Exts. 1 to 1/C, signatures of witnesses on statement of the witnesses under Section 164 Cr.P.C., Ext.2 –2/B, signatures of witnesses, Exts.3-3/A, signature of Rinki Kumari on “fardbeyan” and signature of Rinki Kumari on fardbeyan, Ext.4 is seizure list, Ext.5 is requisition for injury report, Ext.6 is charge-sheet, Ext.7, is formal FIR, Ext.8 is fardbeyan, Ext.9 is endorsement of fardbeyan to the Officer-in-charge, Majhauilya Police Station, Ext.10-10/G are the statements of witnesses before the Magistrate under Section 164 Cr.P.C. and Ext.11 is injury report.

7. No specific defence has been taken by the appellant



and as per his statement under Section 313 Cr.P.C. and his evidence and cross examination it appears that defence of the appellant is of innocence, complete denial and false implication, due to previous land dispute. However, neither any oral nor any documentary evidence has been adduced on behalf of defence.

8. Learned Sessions Judge after trial has convicted the appellant under Section 376(2)(f) IPC and sentenced him, as stated above.

9. The accused appellant has filed this appeal against the aforesaid order of conviction and sentence passed by the learned Sessions Judge.

10. The ground taken by the appellant for assailing the judgment is that no such occurrence was taken place and he has been falsely implicated in this case and further ground taken by him is that the whole prosecution case has been lodged against him, due to land dispute and that is why there is no injury report of any Government Hospital with respect to victim (P.W.8), rather the report is of a private Doctor and no explanation has been given for the same.

11. On the other hand, it has been argued by learned APP that in this case P.W.8 is the victim, aged about 8 years at the time of occurrence and she has supported her case as stated in her fardbeyan in her evidence in court. It is also submitted that in spite of her cross



examination at length, there is nothing in her cross examination to create even a shadow of doubt about her evidence regarding the commission of rape by the appellant. Further it has been submitted that the above evidence of the victim has found corroboration by the medical evidence of Dr.Meera Chaudhary (P.W.11) as well as from the injury report (Ext.11) and it has also come that she was aged about 7-8 years on the time of occurrence and the aforesaid evidence of the victim found further corroboration from the evidence of other witnesses. Though there is no eye-witness but they have stated that after occurrence she came to her house and narrated everything to her mother and at that time they were present, as such, there is evidence that immediately after the occurrence and the story has been narrated by the victim before them, as such, there is cogent and reliable evidence against the appellant.

12. In the aforesaid background, let me test the evidences and the findings of the learned trial court. P.W.8 is the informant as well as the victim in this case and she has stated in her evidence in court that six months prior, while she was going for study, appellant called her and further stated that her elder sister is in his house. Her evidence in chief further disclosed that the appellant pulled her inside the house and when enquired about her sister, she was slapped and pushed clothes in her house and committed rape upon her, on which



she became unconscious due to pain but when she regained her consciousness, she found blood was oozing out, anyhow she came to her house and appellant fled away after locking his house. Her evidence further shows that she disclosed everything to her mother, who started crying and then her grandfather Jagdish Pandey and Brahmanand Pandey and many others assembled there and she was taken to Majhauilya hospital, from where she was referred to Doctor of Bettiah and she was taken to the clinic of Dr.Meera Chaudhary for treatment. Her evidence also disclosed that the police has recorded her evidence there and taken her signature. She has identified her signature on fardbeyan as Ext.3. She has also stated in her evidence that her statement was recorded in court and she has identified her signature in her statement before court as Ext.3/A. She has been cross examined at length by defence and in her cross examination she has categorically stated in paragraph-14 that she was not treated at Majhauilya hospital. No doubt in her evidence in paragraphs-12 and 13, she has stated that she does not know the meaning of rape and since how long she became unconscious she cannot say. On close scrutiny of the evidence it appears that there is nothing in her evidence to create a doubt about credibility of this witness. This witness at the time of occurrence was aged about 8 years.

13. It further appears that her statement was recorded



under Section 164 Cr.P.C. before the Magistrate after the occurrence and her evidence further found corroboration except for minor contradiction from her statement under Section 164 Cr.P.C.(Ext.10/F)

14. P.W.8, Rinki Kumari, has been examined by Dr. Meera Chaudhary (P.W.11) and she has categorically stated in her evidence that on 21.6.2011 at 10 P.M. she examined P.W.8, Rinki Kumari and also informed Bettiah police, who gave requisition for treatment and injury and on examination she found lacerated injury on lateral vaginal wall and perineum which was bleeding profusely and vaginal tear and perennial were repaired and she has prepared injury report which has been marked as Ext.11. She has also been cross examined and in her cross examination, she has stated that as a private doctor she had treated her on being sent by the Government hospital. No doubt she has stated in paragraph-3 that injury on her private part may be caused due to the fall but the internal injury cannot happen. She has also stated that she has not found spermatozoa and also not found any sign of protest. Her aforesaid evidence has also found corroboration by injury report which has been proved by the doctor.

15. Before discussing the other evidence, let me discuss the submission of learned counsel for the appellant as he has vehemently argued that appellant has been falsely implicated in this case and evidence of doctor itself shows that such type of injury is



possible on fall and family members of the victim ought have taken her to any Government hospital for her treatment, rather she was taken to a private doctor and that fact has not been explained as to why she has been treated by private doctor. Mere perusal of evidence of doctor it appears that she has stated that victim was referred by Government hospital. Furthermore, the evidence of victim shows that she was taken to Majhauiliya hospital first wherefrom she was referred to Dr. Meera Chaudhary.

16. The evidence of doctor shows such type of injury may be caused due to the fall. It appears from the evidence of doctor that she has categorically stated that internal injury cannot be caused on the person of the victim on fall. One more submission has been advanced by the appellant that doctor has also not found spermatozoa in her private part and that falsifies the story of rape. However, it is well established that mere penetration is enough to prove the commission of rape and in present case, doctor has found internal injury on the private part and that can only be caused due to penetration. Though she has not categorically stated about the cause of injury but being a minor girl aged about 8 years, it is not expected that she would tell in detail. Had she stated in detail about commission of rape, she must be tutored witness. But she has not stated so and simply stated that she became unconscious that clearly suggest about



her innocence.

17. Apart from that large number of witnesses have been examined on behalf of prosecution and from the evidence it appears that they are not eye-witnesses to the occurrence but their evidences show that just after the occurrence the victim girl came and narrated the occurrence to her mother and at that time they were present and in spite of their cross examination there is nothing in their evidences to create any doubt about their presence when victim girl came to the house after the occurrence. On the other hand, P.W.1 has stated that Rinki was disclosing the same to her mother and his further evidence is that blood was oozing out from her private part and this witness in his cross examination has stated that he had not gone to Majhauilya but he had gone to private doctor and he reached there at about 2 to 2.30 P.M. in the clinic of Dr. Meera Chaudhary. In paragraph-14 in his cross examination he has stated that he had not seen the victim at her house and at that time village women were present and his evidence found corroboration from his statement under Section 164 Cr.P.C. before the Magistrate. Evidence of P.W.2 also shows that he has also come to know about the occurrence when she came and disclosed the occurrence to her mother and he had also stated that he, along with others, had taken her to doctor and from there she was referred to Bettiah hospital. In spite of his cross examination there is



nothing in his evidence to doubt credibility about the same rather his evidence found corroboration from his statement under Section 164 Cr.P.C. before Magistrate. P.W.3 has also narrated about the occurrence but it clearly appears from his evidence in paragraph-2 that on hulla, he went there and Rinki disclosed everything and blood was oozing out at that time and thereafter she was sent for treatment and his evidence further shows that his statement has been corroborated before the Magistrate under Section 164 Cr.P.C. and he has identified his signature over the statement also. Even in his cross examination this witness has stated that he was not called rather he had gone to her house of his own after her hulla about the rape and he heard everything from the mother of Rinki. His evidence in paragraph-8 further disclosed that till he was there she was conscious. P.W.4 has also stated about the occurrence but he is also not an eye-witness, rather his evidence in chief itself shows that he came at her house while she was disclosing everything and he heard the same and he has stated before the Magistrate also in his statement under Section 164 Cr.P.C. This witness is the grandfather of the victim and even in spite of his cross examination he has stated that he has a talk with Rinki and her mother and they have disclosed everything. His further evidence found corroboration by his statement under Section 164 Cr.P.C. before the Magistrate. Similarly, P.W.5 is also not an eye-



witness to the occurrence but he has also stated that Rinki disclosed the same to her mother and he heard about the same and he has taken her to Majhauriya hospital and from there he came to his house. The statement of this witness has also been corroborated before the Magistrate under Section 164 Cr.P.C. and he has also identified his signature over the statement and his statement also corroborated by the evidence of this witness. P.W.6 also does not appear to be an eye-witness and claims himself to have come to know about the same while Rinki was disclosing the same to her mother and at that time he was present. He has also stated that when he had gone to Majhauriya hospital, doctor has disclosed that her condition is serious, as such, he had taken her to Dr. Meera Chaudhary and police was informed and she was treated there. He has also stated about the statement before the Magistrate and identified his signature. In his cross examination in paragraph-12 he has categorically stated that wife of appellant did not live in the house and Ramchander Sah lived outside and other members used to live there. Even in his cross examination this witness has stated that he had first taken the victim to Majhauriya Government hospital. A suggestion has been given to this witness that in order to remove appellant from the village, conspiracy was hatched up to implicate the appellant in this case and the aforesaid suggestion has been denied by this witness.



18. P.W.7 is the mother of victim and she has also categorically stated that she came and disclosed everything to her and when she started crying whole family members and others assembled there. She has further stated that Jai Narayan Pandey, Shubh Narayan Pandey, Diwakar Pandey, Brahmanand Pandey assembled there and she disclosed about the same to them and victim was taken to Majhauiliya hospital and doctor informed that her condition was serious, as such, they have taken to her to Dr. Meera Chaudhary. She has also stated that her statement was also recorded and her evidence in paragraph-11 she disclosed that stitch was given by Dr. Meera Chaudhary to her daughter.

19. P.W.10 is the Magistrate, who has recorded the statement of the victim as well as the witnesses under Section 164 Cr.P.C. and he has categorically stated that he had recorded statement of the witness Rinki Kumari, Sangeeta Devi, Jai Narayan Pandey, Pradeep Kumar Pandey, Brahmanand Pandey, Shubh Narayan Pandey, Jagdish Pandey and Jai Narayan Pandey and he has proved the same as Exts. 10 to 10/G. There is nothing worthwhile in his cross examination to mention here.

20. P.W.9 is the I.O. in this case and he has clearly stated that he had received the fardbeyan and on that he had registered the case and taken over the investigation and recorded the statement of



Rinki Kumari and also recorded the statement of other witnesses. His evidence also shows that he visited the place of occurrence, prepared seizure list, recorded statements of Rinki Kumari and other witnesses under Section 164 Cr.P.C., obtained injury report and thereafter submitted charge-sheet under Section 376(2)(f) IPC against the appellant. He has proved the fardbeyan and handwriting of PSI, Pramod Prasad.

21. From the evidence discussed above, it clearly appears that P.W.8 has supported her prosecution version in her evidence in court and in spite of her cross examination there is nothing in it to doubt and credibility of it about the same, rather her evidence has been corroborated by her statement recorded under Section 164 Cr.P.C. before the Magistrate and found further corroboration from the evidence of Doctor (P.W.11) as well as the injury report (Ext.11). There are some discrepancies in her evidence, which are bound to occur as she is 8 years old and it is quite natural that she cannot understand the meaning of rape that that is not enough to discard her evidence. Her evidence also shows that she has narrated about the occurrence to her mother just after the occurrence and the doctor has even found injury on her person. Apart from that there are several other witnesses, who have been examined in this case, including grandfather of the victim and though they are not the eye-witnesses to



the occurrence but their evidences show that just after the occurrence the victim has narrated about the occurrence and at that time blood was oozing out from her private part and thereafter she was taken to Majhauriya hospital, from where she was referred to Dr. Meera Chaudhary and the aforesaid evidences of P.Ws. found corroboration by their statement before the Magistrate under Section 164 Cr.P.C. and there is nothing in their evidences to show that they have falsely deposed in this case.

22. As I have discussed above, a plea has been taken by learned counsel for the appellant that the victim was not taken to Government hospital rather to a private doctor in order to create doubt about the credibility of the same and there was enmity from before due to land dispute. Further defence has been taken that father of the victim in a conspiracy tried to get the appellant removed from the village and lodged the false and concocted case against him but neither any evidence has been adduced on behalf of defence in order to show that there was any land dispute prior to the occurrence nor brought any evidence to show that conspiracy was hatched to remove the appellant from the village, rather there are consistent evidences in support of the prosecution case. So far taking her to private Doctor is concerned, the evidence of witness clearly shows that she was taken Government Hospital, Majhauriya but as her condition is serious, she



was referred to Bettiah and hence she was treated by Dr. Meera Chaudhary (P.W.11).

23. From the entire discussions made above, it appears that there are consistent evidence available on record that the victim (P.W.8) was aged about 8 years and even the court assessed her age as 8 years, as such, she was below the age of 16 years. It further appears that there is evidence of P.W.8 that after thrashing on her bed he opened her zip and come over her body and thereafter she was feeling pain and became unconscious. She has also stated that when she regain her consciousness she saw herself without having undergarment (kachhi) and she was bleeding and the witnesses have also stated that they had seen her bleeding soon after occurrence and further evidence of Doctor shows that there were injuries on the external as well as interior portion of her private part and the Doctor has found lacerated injury on lateral vaginal wall and perineum which was bleeding profusely and vaginal tear and perennial were repaired and the evidence of Doctor shows that internal injury is not possible on fall. It is well established that in case of rape evidence of victim does not require corroboration only when the evidence of victim is found to be cogent, reliable and free from any influence and, that too, corroborated by Medical evidence. Considering the same, conclusion can safely be drawn that appellant has committed rape upon P.W.8,



Rinki Kumari.

24. Considering the entire discussions made above, it appears that conviction of the appellant under Section 376(2)(f) IPC is sustainable and the same is upheld. So far sentence is concerned, the appellant has been sentenced to undergo R.I. for ten years, which is the minimum sentence prescribed under Section 376(2)(f) IPC and further fine of Rs.25,000/- and in default imprisonment for one year and, as such, while passing the sentence the learned court below itself has passed the minimum sentence as prescribed, hence no interference is required.

25. Considering the entire discussions made above, the appeal is dismissed and the conviction and sentence of the appellant passed by the learned court below are affirmed. It is also made clear that fine of Rs.25,000/-, if deposited, shall be released in favour of the victim, Rinky Kumari, forthwith.

(Vinod Kumar Sinha, J)

spal/-

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