

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.468 of 2016

(Against the judgment of conviction, dated 22.4.2016 and order of sentence, dated 23.4.2016 passed by Shri Ramakant Yadav, 1st Sessions-cum- Special Judge (Posco) Araria in Special Posco Case No. 3/8 of 2014/Trial No. 08/2014.)

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Raju Rishidev, son of late Mahavir Rishideo, resident of village-Sonapur Dameli,
P.S.-K. Nagar(Champanagar), district-Purnea.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Parijat Saurav, (A.C.)

For the Respondent/State : Mr. Abhimanyu Sharma

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 07-10-2017

The present jail appeal has been preferred by the appellant Raju Rishidev against judgment of conviction in Special Posco Case No. 3/8 of 2014 dated 22.05.2016 whereby the sole appellant was convicted and sentenced rigorous imprisonment for ten years and a fine of Rs. 20,000/- for the offence punishable under section 377 of the Indian Penal Code and rigorous imprisonment for ten years and fine of Rs. 20,000/- for offence under section 6 of the Posco Act, arising out of Araria (R.S.) P.S. Case No. 662 of 2014.

1. Mr. Parijat Saurav has appeared on behalf of the appellant as Amicus Curiae appointed by the this court vide order



dated 8.9.2016.

2..Mr. Parijat Sourav referring to the statement of the witnesses has submitted that no one has seen the crime committed by the appellant and conviction of appellant is only on suspicion and as such he deserves benefit of doubt.

3. Counsel for the appellant Mr. Parijat Saurav submitted that appellant has been convicted in the trial in breach of procedure prescribed under Posco Act. He submitted that section 35 on wards contains detail procedure for conducting trial in Posco Act but in the instant case trial was conducted in complete disregard to the provision of the Posco Act 2012 and as such trial is vitiated and the matter is required to be remitted back to the Special Judge, Posco for reconsideration. He submitted that in the instant case the prosecution has not been able to establish guilt beyond all reasonable doubt and referring to the deposition of P.W11 he submitted that the allegation against the appellant is not corroborated by the medical report as no spermatozoa was found in microscopic field slide examination and as such the allegation of sexual assault and commission of offence under section 377 of the Indian Penal Code is not made out. He also submitted that statement of the witnesses in the instant case cannot be relied upon in the absence of corroboration by medical evidence.

4. I have gone through the materials on record and the deposition of the prosecution witnesses which is as follows:-



5..P.W.1 Budhan Rishidev in his deposition has stated he has seen his grand son in unconscious position.

6.The P.W.2 Nago Rishidev has stated that he has seen the victim boy in unconscious position in the Banshwari. Blood was oozing from his anus.

7.P.W. 3 Kare Rishidev has also stated about the bleeding of the victim boy from his anus.

8. P.W. 4 Chauthi Rishidev has also stated about the fact that victim boy was bleeding through anus.

9.P.W. 5 Dinesh Rishidev has also stated on the point that victim boy was bleeding through anus.

10.P.W. 6 Rita Devi is the neighbour of the victim who has stated in her examination in chief that that accused-appellant has committed unnatural offence upon the victim and the victim was found unconscious in Banshwari.

11. PW.7 Anita Devi is the informant of the case. She has stated that her son has been victimized of unnatural offence and he was found his son in unconscious condition in the Banshwari. She deposed that accused Raju Rishidev has committed unnatural offence on her son.

12. P.W.8 is the victim of the case who has stated in the court that Raju Rishidev has committed unnatural offence which caused bleeding.



13. From the deposition of the witnesses including the victim and the opinion of the doctor it is not in dispute that the victim was subjected to unnatural sexual offence. It is also not in dispute that the victim has identified the appellant who has committed unnatural offence. The I.O. of the case has stated that from the statement of the witnesses including the victim which was collected during investigation he found that unnatural sexual act was committed by the appellant and blood was oozing from the anus of the victim. The opinion of the doctor is also on the line that the victim was sexually assaulted. The I.O. has stated that he visited the place of occurrence and found bamboo trees situated there. He in his cross-examination has accepted that he has recovered 'Lungi' of the appellant on which blood was found present but the Lungi has not been sent to the FSL for examination. Thus in the totality of the facts situation the two facts are established. (i) the victim was subjected to unnatural sexual assault/offence and due to that blood was oozing from his anus. All the witnesses including the Doctor has deposed that the victim was subjected to unnatural sexual offence, medical report is also on the same line that he was subjected to sexual offence, thus, factum of crime is established. The only issue remained thereafter is identification of the accused. (ii) The depositions of the witnesses indicate that appellant Raju Rishidev has taken the victim boy to the Banshwari where unnatural offence was committed. He was



apprehended there and the I.O. of the case has admitted the fact that his Lungi with blood stain was recovered. The aforesaid material is indicative of the involvement of the appellant in the commission of crime and to crown it all the victim boy has identified the appellant in the court, where he categorically stated that this appellant has committed unnatural offence.

14. In the aforesaid facts and circumstances, the court has reason to believe that the appellant has committed heinous crime of unnatural offence on the victim boy aged five years.

15. Adverting to the procedural aspect highlighted by the counsel appearing on behalf of the appellant that the trial was not committed in the manner contemplated under the Posco Act. The court finds it difficult to accept submission of the appellant as the very objective of the Posco Act is to protect interest of the victim when the material on record leads to only irresistible conclusion that the crime was committed and the appellant has committed the crime, the procedural departure in the commission of the trial does not warrant or justify interference with the judgment of conviction and order of sentence.

16. Accordingly, the submission of the appellant about the departure in the matter of conduct of trial by the Special Judge is rejected in view of the statements of the prosecution witnesses and the unambiguous statement of the victim of this case, no interference



is required either on procedural aspect or on substantive aspect.

Appeal is accordingly, dismissed.

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.10.2017
Transmission Date	16.10.2017

