

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.270 of 2016

Arising Out of PS.Case No. -34 Year- 2008 Thana -BIKRAM District- PATNA

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Jeetu Manjhi, Son of Lal Deo Manjhi Resident of village- Azad Nagar, P.S.-
Bikram, District- Patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 09-09-2017

This is an appeal filed by the appellant under Sections 374(2) and 389(1) of the Code of Criminal Procedure calling in question the tenability and legality of a judgment dated 13.12.2011 passed by Additional District & Sessions Judge-V, Danapur in Sessions Trial No. 10 of 1999/29 of 2011 convicting the appellant for an offence under Section 376 of the Indian Penal Code.

2. It is the case of the prosecution that on the basis of information received from one Janakiya Devi, PW 4, the F.I.R. in



question was registered by the authorities of Police Station Bikram, District Patna, on 08.03.2008 and according to the complaint made by Janakiya Devi, on 04.03.2008 it is said that she had gone out for doing her work as a labourer. When she returned to her house at 7.00 in the evening she found that her daughter, the prosecutrix, was not available in the house. She was a small child aged between 4 to 6 years and she immediately saw that the appellant accused Jeetu Manjhi brought back her daughter on his bicycle, dropped her in the house and went away. It is stated that the daughter (prosecutrix) who is also a dumb and mute child, started weeping and by indications pointed out to her mother that the appellant Jeetu Manjhi has committed rape on her. She found blood-stain and marks of injury on her body and dress and when the prosecutrix girl started crying, the informant informed the villagers, who in turn, advised her that looking into the age of the child she should settle the matter in the village Panchayat. It is said that due to the adamant attitude of the accused and his family members, no settlement could have arrived at Panchayat and, therefore, she lodged the report on 08.03.2008 based on which the prosecution was initiated.

3. On behalf of the prosecution, six witnesses were examined, namely, PW 1 Sukhiya Devi, PW 2 Bajrangi, PW 3 Ramsakal Rai – the Investigating Officer, PW 4 the informant and



mother of the prosecutrix Janakiya Devi. The prosecutrix girl was examined as PW 5, and the doctor who examined the prosecutrix was examined as PW 6. Various documents, namely, FIR Ext.1, seizure list Ext.2, and the medical examination report and supplementary medical examination report Exts.3/1 and 3/2 were also marked and based on the statements of the witnesses the conviction has been ordered and the appellant sentenced to undergo 10 years of rigorous imprisonment.

4. Learned counsel appearing for the appellant invited my attention to the F.I.R. Ext. P/1, statement of PW 4 mother of the prosecutrix and certain discrepancies in the statement of the mother, referred to Section 119 of the Indian Evidence Act, 1872 and argued that the prosecutrix being a dumb girl in the matter of examining her the requirement of Section 119 of the Evidence Act has not been complied with. He further argued that PW 1 Sukhiya Devi and PW 2 Bajrangi have not supported the case of the prosecution, they have turned hostile and, therefore, the conviction is unsustainable. It is further argued that the seized cloth was not sent for medical examination and the same was never produced before the trial court and this is a serious lacuna in the case of the prosecution which could be viewed seriously. It was also argued that the police station is only one kilometer away from the residence of the informant and there is



no justification in four days delay in lodging the F.I.R. All this, according to the counsel representing the appellant, are fatal to the case of the prosecution and the appellant has to be acquitted. He further submits that the appellant has been in custody for a period of more than 6 to 7 years and, therefore, now he should be left free.

5. On the contrary, learned counsel appearing for the State argued that there is only minor discrepancy in the statement of PW 4 which does not materially affect the case of the prosecution. He took me through the statement of PW 3 Ramsakal Rai, the Investigating Officer, and the medical evidence of PW 6 Dr. Sarita, to argue that injuries found on the body of the prosecutrix particularly injury on the private parts are sufficient enough to uphold the conviction and no indulgence into the matter is called for. As far as breach of the provision of Section 119 of the Evidence Act is concerned, learned counsel on behalf of the prosecution argued that even if no interpreter or an expert witness was utilized for the purpose of recording evidence of the witness (the prosecutrix), when the evidence of PW 4 the mother available on record did support the case of the prosecution, there is no need for interference on the ground that PW 5 the prosecutrix was not examined in accordance with the requirement of Section 119 of the Evidence Act.

6. I have heard learned counsel for the parties at length



and find that PW 1 Sukhiya Devi and PW 2 Bajrangi who are family members have pleaded ignorance about the incident and they have been declared hostile. In his statement PW 3 Ramsakal Rai, I.O., has indicated and proved recording the FIR vide Ext.1, seizure of the red-colour undergarment and frock of the prosecutrix as is detailed in Ext.2, medical examination of the girl by Dr. Sarita, PW 6, and PW 4 Janakiya Devi the informant and mother of the prosecutrix, supports the case of the prosecution and there is nothing to disbelieve her statement. PW 4 is the mother of the prosecutrix. She has been staying with her since her birth and she categorically stated that even though her daughter is dumb and cannot speak but she could understand what she said from her sign language and had recorded her statement based on the said sign language indicated by her daughter. She also testified about the blood on her body and cloth, bleeding from her urinal track and various other factors with regard to physical injury on the person of the prosecutrix and if these factors are evaluated in the light of medical examination and the evidence of PW 6 Dr. Sarita, it is clear that the same is corroborated. Various injuries like abrasion on the lumbar area, abrasion on various parts of the body, injuries caused on the body being within 48 hours and injuries on the private parts proved by the doctor are testimony of the fact that the prosecutrix was put to some harassment and she was



dealt with in a manner which indicates that she has been subjected to rape. At least 48 hours before she was presented for medical examination. The doctor further has assessed the age of the victim of about 4 to 6 years based on the medical evidence that has been produced. That apart, as per the supplementary medical report Ext.3/2, the microscopic examination of the vaginal swab of the prosecutrix by the Microbiology Department of Patna Medical College also indicates that the prosecutrix has been subjected to the offence in question.

7. The case of the defence is primarily based on the delay in lodging of the F.I.R. PW 4 has clearly indicated that the incident came to her notice after 7 p.m. on 04.03.2008. Thereafter, on the advice of the villagers, efforts were made for settlement of the matter through Panchayat, and when the same failed, the F.I.R. in question was lodged. In the matter of delay in lodging of F.I.R. particularly in cases pertaining to sexual offence and adverse effect on the same on the case of the prosecution, the law is well settled to the effect that mere delay in lodging of the F.I.R. cannot be a sole criteria for disbelieving the case of the prosecution when corroborative medical evidence are available suggesting commission of the offence and if independent evidence available on record inspires confidence and is sufficient enough to uphold the conviction mere minor discrepancy



in the case of the prosecution cannot be a ground for disbelieving the story put forth by the prosecution. Law is well settled that if the sole testimony of the prosecutrix is sufficient enough to inspire confidence into the mind of the Court the same is good enough for upholding the conviction in an offence pertaining to sexual offence. In this regard reference may be made to the following judgments, where mere delay in lodging of F.I.R. is held to be not sufficient enough for acquittal of an accused:-

(a) Satish Shetty vs. State of Karnataka

(2016) 12 SCC 759

(b) State of H.P. vs. Sanjay Kuamr

(2017) 2 SCC 51

8. In the present case, the delay in lodging of the F.I.R. has been reasonably explained by PW 4 mother of the prosecutrix and her statement is sufficient enough to believe the story put forth by her. There is no reason and no evidence or justification as to why her statement should be disbelieved. Even in his statement recorded under Section 311 of the Code of Criminal Procedure, 1973, the accused does not say anything with regard to his false implication. Even a suggestion is not made to PW 4 in her cross-examination to indicate that she has falsely implicated the accused person. On the contrary, her statement does show that when she was away from her house and she returned back at 7 p.m. her daughter was not available



at home and immediately after she came, the appellant brought her back in a bicycle and immediately thereafter the daughter started crying and she found the injuries and mark on the cloth. There is nothing available on record to disbelieve the aforesaid statement of PW 4. Even though the prosecutrix has been examined as PW 5, and the statement and the observation made by the learned Judge indicated that she was deaf and dumb when she was produced in the court she could not speak, but when questions were put to her she went to her mother and started weeping by catching hold her tightly. If the statement of PW 4 and the Investigating Officer is evaluated in the backdrop of the statement of PW 6 Dr. Sarita, it is clear that she has seen various injuries on the person of the prosecutrix. She had also seen injuries on her private parts and she speaks about the injuries being caused 48 hours before the examination.

9. Taking note of all these circumstances, there is no reason to disbelieve the case of the prosecution and interfere into the matter merely on account of delay in lodging the F.I.R. or on account of the prosecutrix, a dumb child, not being examined in accordance with the requirement under Section 119 of the Evidence Act, the case of the prosecution cannot be discredited or disbelieved. The ample evidence available on record is sufficient enough to prove the case of the prosecution and uphold the conviction. As the appellant is on



bail, his bail bond be cancelled and he be taken into custody to undergo the remaining period of the sentence.

10. Accordingly, finding no merit in the appeal the same stands dismissed.

(Rajendra Menon, CJ)

mrl.

AFR/NAFR	NAFR
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