

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.552 of 2017

Arising Out of PS. Case No.-487 Year-2014 Thana- Biharsharif District- Nalanda

Suhani Priya daughter of Arun Prasad, Resident of Village- Gopaychak,
Post +P.S. Saksohara, District- Patna (Bihar) Pin Code- 803213.

... .. Appellant

Versus

1. The State of Bihar.
2. Vipin Kumar , Son of Shivnandan Prasad, Resident of Village- Barah, Post
Bhuapur, P.S.- Belchhi, District- Patna (803211).

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Jitendra Narain Sinha, Adv.
For the Respondent/s	:	Mr. Ashwani Kumar Sinha, A.P.P.
		Mr. Akhileshwar Prasad Singh, Sr. Adv.
		Mr. Amrit Anunay, Adv.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

5 09-10-2017 In the last, but one paragraph of order no.4 dated 31.08.2017, it has been incorrectly typed as “informant/ respondent no.2” in stead of “accused/respondent no.2”. Accordingly, in the last but one paragraph of order dated 31.08.2017, the word “informant” may be substituted as “accused”.

2. The order dated 31.08.2017 stands corrected to the extent, as indicated above.

3. Heard Sri Jitendra Narain Sinha, learned counsel for the appellant, Sri Ashwani Kumar Sinha, learned Addl. Public



Prosecutor as well as Sri Akhileshwar Prasad Singh, learned Senior Counsel, assisted by Sri Amrit Anunay, learned counsel, who has appeared on behalf of accused/respondent no.2.

4. The present appeal has been preferred by the victim against the Judgment of acquittal dated 28.02.2017 passed in Trial No.22 of 2015, arising out of Bihar P.S. Case No.487/2014. By the said Judgment, Sri Shashi Bhushan Prasad Singh, learned Addl. Sessions Judge-1-cum-Special Judge, Nalanda at Biharsharif has acquitted the respondent no.2 from charges of offence under Sections 376, 292 A, 323, 506 of the Indian Penal Code and Sections 4,6,8,10,12 and 14 of the POCSO Act,2012.

5. Short fact of the case is that in the year 2014, a computerised report duly signed by the appellant was filed before the police alleging therein that she was a minor and while she was studying in Biharsharif, was staying in a room of the house of one Subodh Prasad as a tenant. On 29.12.2012 at about 6.00 A.M. respondent no.2, brother-in-law of the appellant (Fufera Jija) came to the said room and after entering he bolted the room and, thereafter, forcibly committed rape on her. While she tried to raise alarm, her



mouth was gagged and she was threatened to kill and subsequently the victim became unconscious. When she regained her consciousness, she saw that accused was taking photograph through his mobile. She was also threatened that the photograph would be shown to everyone. She further alleged that on the same day, about 1 O'clock, the respondent no.2 took the victim to the market for purchasing a suit and it was purchased, which was valued Rs.780/-, for the victim and returned back to the victim's room at 2.30 P.M. The appellant alleged that she was again raped forcibly on the same day and she had been again threatened. It was alleged that after committing rape on second occasion, the accused left the room and, thereafter, telephonically the appellant was threatened. She also gave two mobiles number of the accused and also gave her mobile number. She disclosed that due to fear, as alleged, the appellant did not take any stringent action. After about two years i.e. in the year 2014 when for the purposes of negotiation of marriage she was going to Patna, she received a telephone call from the accused and accused also went there. On 05.10.2014 she was telephoned and she was called in a room, where she was threatened regarding sending C.D.R of the occurrence to her would be



husband. Thereafter, she narrated everything to her mother and finally a computerised written complaint was filed, in which it was specifically alleged that she was raped twice on 29.12.2012. Thereafter, an F.I.R. vide Bihar P.S. Case No. 487/2014 was registered against the respondent no.2 and maternal uncle of respondent no.2. However, after investigation, chargesheet was submitted only against respondent no.2 and, subsequently, final form in respect of maternal uncle of respondent no.2, namely, Sanjay Kumar was submitted showing lack of evidence.

6. During investigation, statement of the victim under Section 164 of the Code of Criminal Procedure was got recorded. In her statement recorded under Section 164 of the Code of Criminal Procedure, she alleged that on 29.12.2012 she was raped twice. During investigation, the Investigating Officer tried to get the evidence as to whether on the date of occurrence, the accused was seen near the place of occurrence or not. However, no any such material was collected. The respondent no.2, at the relevant time, was posted as Stenographer in the office of the Addl. District Magistrate, Mohamadabad, Mau (Uttar Pradesh). During investigation, it appears that the Investigating Officer had



noticed that on the alleged date of occurrence i.e. 29.12.2012 accused/respondent no.2 was on duty in the office of the Addl. District Magistrate, Mau(Uttar Pradesh). After submission of chargesheet, the order of cognizance was passed and the case was committed to the court of Sessions, where charges were framed.

7. Since the accused/respondent no.2 denied the charges, the prosecution to prove its case examined altogether nine witnesses. After closure of the prosecution evidence, statement of accused under Section 313 of the Code of Criminal Procedure was got recorded, in which he denied regarding reliability of the evidence and circumstances, which were brought against him and he also preferred to examine defence witnesses. From the defence side, altogether eight witnesses were got examined and out of eight witnesses, at least D.W.2 was cousin brother of the victim/appellant. During trial, the victim to some extent changed her stand regarding the date of occurrence. Instead of stating that she was raped twice on 29.12.2012, she deposed as if she was raped on 27.12.2012. During trial, one Doctor was examined as P.W.5 and she stated that the age of the victim was about 17-18 years on the date of her examination i.e. 07.12.2014,



but the x-ray report was not got proved. The learned trial judge noticed that the victim was not examined either by Radiologist or by Orthopaedic Surgeon or Dental Surgeon and no occification test about development of bones of the victim by any of the Medical Officer. During evidence, the mother of the victim was examined as P.W.1.

8. Sri Jitendra Narain Sinha, learned counsel for the appellant has argued that the victim, at the time of occurrence, was minor and, as such, under presumption of POCSO Act she was raped by the accused, which was required to be demolished by the defence, which has not been done. It has been argued that there was sufficient evidence on record to show that the appellant, while she was minor, was raped, but the learned trial Judge in a mechanical manner has passed the order of acquittal, which requires interference.

9. Sri Akhileshwar Prasad Singh, learned Senior Counsel, assisted by Sri Amrit Anunay, learned counsel, appearing on behalf of the accused/respondent no.2 and Sri Ashwani Kumar Sinha, learned Addl. Public Prosecutor have vehemently opposed the appeal. It has been argued that on perusal of the Judgment and evidences, it is evident that in the Judgment of acquittal, there is no perversity and, as such,



same is not required to be interfered with. Sri Singh, learned Senior Counsel appearing on behalf of respondent no.2 has drawn our attention to the statement of P.W.1, who is none else but mother of the victim, in paragraph-76 of her cross-examination. It has been argued that this witness was not illiterate, rather she was a teacher and in her cross-examination, she herself has admitted that after noticing the fact that on 29.12.2012 the accused/respondent no.2 was found on official duty in Mau(Uttar Pradesh), she changed the date of occurrence from 29.12.2012 to 27.12.2012. He has further argued that it was a case of the appellant/victim that on the date of occurrence, her room-mate, namely, Suruchi Kumari (P.W.6) was present and in her presence the accused had visited the rented room of the victim. The said witness has been examined as P.W.6 and she has not supported the prosecution version. She has not even said that on the alleged date, the accused had come to the rented room. She has also said that she was not aware as to whether, the appellant has filed any case or not. Besides this, it has been argued that F.I.R. was signed by two witnesses, out of whom one witness, namely, Shiv Shankar Prasad was purposely withheld by the prosecution. It has been argued that during trial, documentary



evidence was brought on record to establish the identity of Shiv Shankar Prasad. However, the victim as well as the father of the victim, who has been examined as P.W.9, have stated that they were not aware about the name of Shiv Shankar Prasad. Under the right to information Act, an information was gathered regarding identity of Shiv Shankar Prasad and identity was established that Shiv Shankar Prasad was relative of the victim and he had put his signature on the F.I.R., who is accused in a case registered at Delhi. Copy of the F.I.R. was got exhibited as Ext. D to show that Shiv Shankar Prasad was chargesheeted in the said case, in which there was allegation that he was trying to extort money from a lady Judicial Magistrate of Delhi . It has been argued that after identification of the said person, who had put his signature on the F.I.R. as well as after noticing the fact that the said person was in the habit of extorting money from a Judicial Magistrate, it shows that Shiv Shankar Prasad was instrumental to get the false case registered against respondent no.2. It has also been argued that it is a case of the victim, who has been examined as P.W.2, that at the time of rape in the year,2012 she had passed matriculation examination and she was attending a coaching institute after



hiring a room on rent, which has been shared by one Suruchi Kumari (P.W.6). It has been argued that if for the time being it is assumed that the victim due to mental agony had not taken any step to lodge the case immediately after rape and after two years she filed a case, but her conduct shows that she was not at all in state of mental agony. He submits that had it been a case of rape, there was no question to pass Intermediate examination with second division and B.A. Part-I and II examination with first division, in which she had appeared even after the occurrence of rape. It has been argued that if the victim was Matriculate on the alleged date of occurrence and she was pursuing study, in normal course to establish that she was a minor on the alleged date of occurrence, she should have produced Matriculation Certificate regarding her date of birth, but purposely in the case matriculation certificate was withheld. Had the matriculation certificate been brought on record, it would have been established that on the date of occurrence, the victim/appellant was not minor girl. Sri Singh, learned counsel appearing on behalf of respondent no.2, by way of referring to paragraph-32 of the evidence of the Investigating Officer, who was examined as P.W.8 , has argued that the



Investigating Officer during trial had made categorical statement that during investigation he had verified the fact and it had come to his notice that on 28.12.2012 and 29.12.2012 the accused/ respondent no.2 was on official duty in the office of Addl. District Magistrate, Mau (Uttar Pradesh). He has also referred to paragraph 38 of the deposition of the Investigating Officer and submits that the Investigating Officer on the basis of case diary has admitted that regarding the presence of accused/respondent no.2 on 27.12.2012, he had verified and found that the accused/respondent no.2 was not present on 27.12.2012 near the place of occurrence. On the aforesaid ground, it has been argued that the learned trial Judge after noticing the entire evidence has come to the conclusion that the prosecution has not established its case beyond all reasonable doubt.

10. Besides hearing learned counsel for the parties, we have examined the entire material including the evidences, which were brought on record. It may be clarified that in this case by order dated 31.08.2017, we had summoned lower court record, which has been received and kept on record. We have examined the evidences as well as Judgment of the trial court. After examining the entire evidences and material on



record, we are of the considered opinion that the learned trial Judge has committed no error warranting interference and there is no perversity in the judgment of the trial court and, as such, there is no ground to grant leave to appeal.

11. Accordingly, I.A. No.1353 of 2017 filed under Section 378(3) of the Code of Criminal Procedure, 1973 stands rejected. Consequently, the appeal against acquittal too is dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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