

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.404 of 2015

Arising Out of PS.Case No. -24 Year- 2012 Thana -DHAMDAHA District- PURNIA

=====

Sochen Kumar @ Sachin Kumar Yadav, S/o Sri Sadanand Yadav, resident of Village- Nandgram, P.S.- Dhamdaha, District- Purnia.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Praveen Kumar Agrawal- Advocate
Mr. Santosh Kumar Singh- Advocate

For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 27-03-2018

Appellant Sochen Kumar @ Sachin Kumar Yadav has been convicted for an offence punishable under Section 366A of the I.P.C. and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo R.I. for one year, under Section 376 of the I.P.C. and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs.10,000/- and in default thereof, to undergo R.I. for two years, additionally, with a further direction to run the sentences concurrently vide judgment of conviction dated 21.05.2015 and order of sentence dated 23.05.2015 passed by the 2nd Additional Sessions Judge, Purnia in Sessions Trial No.907 of 2012/ 27 of 2014.

2. PW-5, Damodar Prasad Yadav, filed written report



on 13.04.2012 disclosing therein that his youngest minor daughter (name withheld) has gone to appear in Intermediate Science Examination on 05.04.2012 at High School Dhamdaha, but could not return. Firstly, he thought that after examination, she might have gone to relative and so, did not take it seriously. But, as she has not returned, he became anxious in tracing her out and during course thereof, he came to know that his co-villager Sochen Kumar in association with his friend Dablu Singh @ Prabhat Singh kidnapped his daughter, whereupon he rushed to the place of Sadanand Yadav and his wife (parents of Sochen) and enquired whereupon, they scolded, abused and further, directed to leave.

3. After registration of Dhamdaha P. S. Case No.24 of 2012, investigation commenced and during course thereof, victim was recovered having in company of appellant/ accused from Delhi, her medical examination was done, her statement under Section 164 of the Cr.P.C. was recorded, other witnesses were also examined and after completing the same, chargesheet was filed facilitating the trial which concluded in a manner, subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, it has also been pleaded that victim was a consenting party, which she was able to



accord being above the 16 years of age and that being so, neither it happens to be a case of kidnapping nor rape. However, neither ocular nor documentary evidence has been adduced in defence.

5. In order to substantiate its case, prosecution had examined altogether ten PWs, who are PW-1, Kulanand Yadav, PW-2, Dr. Jalaj Kumar Yadav @ Dr. Jalaj Kumar, PW-3, Suchita Devi, PW-4, Dr. Skindha Priyadarshni, PW-5, Damodar Prasad Yadav, PW-6, Mohan Lal Yadav, PW-7, Surendra Prasad Yadav, PW-8, the victim herself, PW-9, Lalan Paswan and PW-10, Saroj Kumar. Side by side, had also exhibited as Exhibit-1, medical report, Exhibit-2, written report, Exhibit-3, statement recorded under Section 164 of the Cr.P.C., Exhibit-4, formal F.I.R. As stated above, neither ocular nor documentary evidence has been adduced on behalf of defence.

6. The learned counsel for the appellant while assailing judgment of conviction and sentence impugned has submitted that no offence under Section 366A of the I.P.C. nor under Section 376 of the I.P.C. is made out. It has further been urged that occurrence happens to be dated 05.04.2012 that means to say, before amendment having effected in the Year 2013 and so, as per Clause-VIth of Section 375 of the I.P.C., the age of valid consent at the end of the alleged victim was that of 16 years. From the statement recorded under Section 164 of the Cr.P.C. (Exhibit-3), it is apparent that victim herself had disclosed her



date of birth as 25.02.1996, which PW-1 during course of cross-examination had also re-iterated. The alleged occurrence is of the dated 05.04.2012, so, certainly victim had already crossed the barrier of 16 years and so, was competent enough to accord consent. Furthermore, it has also been submitted that though victim (PW-8) had alleged that while she was under custody of appellant, was raped, but her conduct suggests that she was a consenting party and whatever been deposed by her appears to be under the influence of her guardian and that being so, the finding of the learned lower Court identifying the appellant to be guilty under Section 376 of the I.P.C. is not at all found maintainable.

7. In same vein, learned counsel for the appellant has submitted that no offence under Section 366A of the I.P.C. is made out in the background of the fact that law requires that kidnapping should be for the purpose of getting the victim indulged in a sexual activity with other than the kidnapper. In this particular case, appellant himself has been arrayed as a kidnapper and so, the subsequent activity could not justify the finding having been recorded by the learned lower Court. Then, it has been submitted that in terms of Section 375 of the I.P.C. where age of 16 years has been found valid in order to recognize consent in the aforesaid background, if the conduct of the victim is found inclining towards the accused, then in



that circumstance, question of kidnapping would not arise. That being so, appellant neither could be held guilty for offence punishable under Section 366A of the I.P.C. nor under Section 363 of the I.P.C. Last but not the least, it has been submitted that the appellant remained under custody for more than four years. In the aforesaid background, lenient view be taken considering the conduct of the victim.

8. On the other hand, learned Additional Public Prosecutor while supporting the finding recorded by the learned lower Court has refuted the submission having been advanced on behalf of learned counsel for the appellant and submitted that once victim had declined to accept suggestion having at the end of the appellant that she was a consenting party, then in that circumstance, appreciation of evidence should be in the aforesaid background. After going through the evidence, it is evident that victim was taken away by the appellant in deceptive manner and then, was raped against her will, consent and so, appellant has rightly been convicted and sentenced for.

9. It is needless to say as being settled at rest by catena of decision that the evidence of victim lies on upper pedestal and unless and until, there happens to be cogent reason to discredit her testimony, it should be accepted. While observing so, the prevailing Indian social fabric whereunder chastity of a woman is found more valuable than the soul, is carry scar, humiliation, stigma, having her



own prestige as well as prestige of her family at stake coupled with the disgraceful treatment of the victim of rape in the society are some of the circumstance, which has been taken into consideration while observing and that happens to be reason behind that so far rape cases are concerned, delay in institution of the case has not been considered, hazardous to the prosecution unless and until circumstances so speak and in likewise manner, the evidence of the victim, unless and until appears to be suffering from inherent improbability, should not be treated in same manner while dealing with the evidence of the other witnesses. More recently in *State of Himachal Pradesh vs. Sanjay Kumar alias Sunny reported in 2017 CRI.L.J. 1443*, it has been held:-

“31. After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to



injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance {[See Bhupinder Sharma v. State of Himachal Pradesh](#) (2003) 8 SCC 551}. Notwithstanding this legal position, in the instant case, we even find enough corroborative material as well, which is discussed hereinabove.”

10. In the aforesaid background, now evidences are to be seen. PW-4 is the doctor, who had examined the victim on 01.05.2012 and found hymen old ruptured and on the basis thereof,



she had not ruled out indulgence of victim under sexual activity/ raped. Moreover, from the medical report (Exhibit-1), it is apparent that on interrogation, victim had herself disclosed the last date of intercourse as 27.04.2012.

11. One more thing which comes out from the aforesaid Exhibit-1 in consonance with the evidence of PW-4 is that in spite of being Gynaecologist, PW-4 had estimated age of the victim in between 14 to 17 years, but not above 17 years and on that very score, though there happens to be no cross-examination, but the finding recorded by the PW-4 in absence of constitution of the Medical Board consist of Radiologist, Orthopaedist, General Physician including Gynaecologist put question mark over the aforesaid finding as being a Gynaecologist, she would not have possessed an expertise on that very score. However, after cross-examination of PW-1, who under Para-10 of his cross-examination had disclosed the date of birth of victim to be 25.02.1996, as per certificate and during cross-examination of PWs, it is apparent that prosecution had not controverted the same that means to say, on the date of alleged occurrence, victim was more than 16 years of age.

12. Now, coming to ocular evidence, it is evident that out of PW-1, PW-2, PW-3, PW-5, PW-6, PW-10, none are an eye witness to the alleged occurrence. What they have deposed happen to



be on the basis of information having gathered by them during course of searching of the victim as well as after recovery of the victim as she disclosed the event, which she confronted during the intervening period.

13. Now, the case hinges on the sole testimony of PW-8, the victim. She during her examination-in-chief had stated that on the alleged date, she had gone to Dhamdaha High School to appear in Intermediate Examination. After examination, when she came out, Sachin Kumar met in midst of way, who directed her to accompany, failing which, also threatened to kill. She was not inclined to join his company, but on her threatening that he will kill her, followed. Then thereafter, he offered roasted eatable and forced her to eat. After eating, she became unconscious. When she regained sense, she found locked in a room. Later on, she came to know that she was at Purnia and that room belonged to Dablu Singh. On 6th April, she was taken to Purnia Station, boarded in a train and then, took her to Delhi where she was kept at the place of Bablu Singh, brother of Dablu Singh. 3-4 days, she was confined in that room, then thereafter she was shifted to another place. He used to assault. During intermediary period, she was raped. On 28.04.2012, police came and rescued her along with Sachin Kumar, took her to police station and then to Dhamdaha Police Station. Then thereafter, she was taken to Purnia Sadar Hospital



where she was medically examined, statement was also recorded before the Magistrate (exhibited), identified the accused. During cross-examination at Para-2, she had stated that their first meeting was on 25.02.2012, on which date, he had offered '*Litti*' after eating the same, she became nervous and then, she was taken to a Banana field by Sachin, who committed rape on her. In Para-4, she had stated that he committed rape twice or thrice. She is unable to disclose the owner of the Banana field, but same was by the side of the road. In Para-8, she had stated that in between 25.02.2012 to 04.04.2012, she had occasion to see Sachin face to face, but being in company of friends, got no opportunity to meet. She had not disclosed with regard to the occurrence, which she faced at an earlier occasion to her friends. In Para-10, she had further stated that they were not on mobile. In Para-12, she had stated that centre of examination as well as Bus Stand both lies in the market itself. After coming out from examination centre, she met with Sachin. She is not remembering the name of his shop. At that very time, Sachin was alone. The place was lonely. It was Animal Husbandry Hospital. In Para-13, she had disclosed the way to her village from the examination centre. She had also disclosed that shortest route happens to be through the Animal Husbandry Hospital. In Para-14, she had stated that she was going alone as she had left her friend. She had denied the suggestion that



Sachin had informed her that he will be alone on that road since before, so she on her own, came to him. In Para-15, she had stated that remembering the incident having been committed at his end previously, she became confused whether to ignore, to run away, or to raise alarm. In Para-16, she had further stated that Sachin had disclosed that he will not indulge in such kind of activity. She had further stated that even re-collecting the incidence of accepting 'Litti' by her, even then, she had accepted roasted eatable. In Para-17, she had stated that after two hours, she regained sense. At that very time, she was at Purnia while she was going to Purnia Station, father of Sachin, maternal uncle of Sachin, Dablu Singh and 3-4 unknown persons accompanied them. Purnia Railway Station is a Junction. Large numbers of passengers were there. Whether police was there or not, she is not remembering as she was nervous. She again disclosed that she is unable to say how many hour after regaining sense, she became nervous. In Para-18, she had stated that they have gone through Simanchal Express. It was a sleeper coach. All seats were full. She is not remembering whether Ticket Collector, police personnel were present or not. She had not raised alarm as she was nervous. In Para-19, she had stated that she was nervous, therefore, she happens to be unable to disclose at which station, they got down. How she had gone therefrom, is not remembering. In Para-20, she had



stated that during course of her statement before the police, she had stated that at the time of boarding and de-boarding, she was not conscious. In Para-21, she had stated that she had not married with Sachin. She had further stated that at the time when police recovered her, no vermilion was over her head. She remained with Sachin for 10-15 days at Delhi. She remained unconscious. She is not remembering when she remained conscious and when she remained unconscious. She is unable to disclose whether food was provided by Sachin and at how many days. She had said that after seeing face of Sachin, she recollected that he had committed rape on her. In Para-22, she had stated that the place where she was residing at Delhi, was densely populated. She was unable to disclose furthermore as she was kept confined in a room. Whether she remained alone in the room along with Sachin, she was not remembering. Bathroom was attached. There was no cooking utensils, food was taken from outside. In Para-23, she had stated that Sachin brought food. Usually, she did not take the same, but sometimes Sachin forced her to eat. Whether she took food daily, she is not remembering. In Para-24, she had stated that 4-5 Thana lies in between way Dhamdaha to Purnia. As she was nervous, so, she had not raised alarm. Then had denied the suggestion that she was very much affectionate with Sachin and on account thereof, she was adamant to marriage with him, which was resisted by her family



members and in the aforesaid background, she took Sachin, gone to Delhi did marriage and then, began to lead happy marital life. Subsequently, having been pressurized at the end of her family members, she had deposed in such manner.

14. PW-9 is the I.O., who had deposed that after registration of the case, he was entrusted with the investigation and accordingly, proceeded there with. Recorded statement of the witnesses, seen the place of occurrence, during course of investigation, he was confidentially informed that victim is residing at Quarter No.378, J. J. Indira Camp, Srinivaspuri, whereupon after taking permission from superior official proceeded to Delhi, met with Officer-in-Charge of Srinivaspuri P.S., a raiding party was constituted, raid was conducted and victim along with Sachindra Kumar were apprehended. Then thereafter, on the basis of the transit warrant, they returned back. Victim was medically examined, she was examined under Section 164 of the Cr.P.C. and then thereafter, completing the investigation, submitted chargesheet. During cross-examination at Para-3, he had stated that it was a room 6' x 10' having no attached bathroom, kitchen. Cloth of boy as well as girl was there. In Para-4, he had stated that when they reached at the room, door was opened. Accused was coming out from the room while girl was sitting. She was in *Samiz and Salwar*. At Para-7, he had stated



that when they reached, they have not found vermilion over her head. There was no bridal dress. He had not inquired with regard to presence of Sari, Saree and blouse. At Para-12, she had stated that after seeing them, the girl began to weep. They have not inquired why she was weeping. In Para-17, he had disclosed that victim was residing at upper floor of the house.

15. Amendment under different Sections of the Penal Code, Evidence Act including other laws, was made effective from the date of publishing in the Gazette of India i.e. 02.04.2013 and that being so, it was effective there from being prospective in nature. The date of occurrence of present case happens to be dated 05.04.2012 and that being so, it was before the aforesaid amendment. At the relevant time, the definition of rape was in following way ***Section 375 of the I.P.C.:-***

*“1[375. **Rape.**—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—*

(First) —Against her will.

(Secondly) —Without her consent.

(Thirdly) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.



(Fourthly) — *With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.*

(Fifthly) — *With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.*

(Sixthly) — *With or without her consent, when she is under sixteen years of age. Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.*

(Exception) — *Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.]”*

16. From the evidence available on the record, it is crystal clear that victim was not knowing since before that today raid is going to be conducted and she along with appellant were to be apprehended. This has got significance in the background of the fact that on each and every occasion while she was cross-examined over crucial point to explore whether she was a consenting party or not, she used to say that she was unconscious or nervous, so was unable to say.



That means to say, on the alleged date on which, police conducted raid without pre-information, she should have been continuing with the aforesaid situation, but neither she on her (PW-8) nor the I.O. (PW-9) had stated that at that very time, she was nervous or semi-conscious or unconscious. In the aforesaid background, her assertion that she was unconscious or semi-conscious or nervous during the intermediary period, appears to be reliable. That being so, her conduct has to be seen whether she was consenting party or not? She proceeded without any resistance nor tried in order to raise alarm to rescue herself, even while boarding train, getting down at Delhi, remaining at Delhi, whereupon would be found to be a consenting party while enjoying the company of the appellant Sachin.

17. In *Tameezuddin @ Tannu vs. State (N.C.T. of Delhi)* reported in (2009) 15 SCC 566, it has been held:-

“9. It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. We are of the opinion that story is indeed improbable.”

18. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower Court is set aside. Appeal



is allowed. Appellant is on bail, hence is discharged from its liability.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	29.03.2018
Transmission Date	29.03.2018

