

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.122 of 2013

Arising Out of PS. Case No.-54 Year-2007 Thana- BARAHIYA District- Lakhisarai

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Dabloo Singh S/o Late Cheno Singh Resident of Village Pratappur, P.S
Barahiya, District- Lakhisarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Pankaj Kumar Sinha Mr. Rabi Bhushan Ms. Rakhi Kumari
For the Respondent/s	:	Ms. Abha Singh (App)

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date : 11-10-2018

Heard learned counsel for the appellant and learned
APP for the State on this Criminal Appeal.

2. This criminal appeal has been preferred against
the judgment and order of conviction dated 31.01.2013 and
order of sentence dated 05.02.2013 passed by learned
Additional Sessions Judge, Lakhisarai in Sessions Trial no. 08
of 2008 arising out of Barahiya P.S. Case No. 54 of 2007
whereby the learned trial court convicted the accused Dabloo
Singh for the offence punishable under Sections 376 of the
Indian Penal Code and sentenced him to undergo R.I. for seven
years and also slapped him with a fine of Rs. 10,000/- and in
default of payment of fine to further undergo R.I. for one year



under the aforesaid Section.

3. The factual matrix of the case is that Barahiya P.S. Case No. 54 of 2007 was instituted under Section 376 of the Indian Penal Code against accused Dabloo Singh on the basis of statement of Pardesi Das S/o Late Harkhit Das recorded on the P.S. Barahiya on 12.03.2007 at 03:30 PM with the allegation, in succinct that in the morning of 12.03.2007, he along with his wife Anar Devi and daughters, namely, Vina Kumari aged about 10 years and Kajal Kumari aged about 8 years had gone to the field of Lago Singh to harvest Khesari crop. At around 1:00 PM, he asked his daughters to go to the house and fetch potable water as there was no arrangement of water there. In the meantime, Pankaj Das and Pravin Das arrived at him and informed about committing of some occurrence against his daughter in the hump located at 30-40 yards of his house. On the said information, he along with his wife rushed to his house, on the way, he learnt that his daughter Vina Kumari was lying senseless in the field of Niranjana Singh and wife of Company Paswan took her to his house. Then he and his wife arrived at his house and grilled Vina. On grilling, she divulged that when she had gone outside of her house in search of her sister Kajal after keeping firewood at her house, Dabloo Singh met her near



the wheat field of Niranjan Singh and he dragged her inside the wheat field forcibly and gagging her mouth shoved her on the ground, striped off her salvar and committed rape against her. He also inflicted injury on her cheek. by means of nail and pressed her neck. There was stain of blood and semen on the frock and salvar of his daughter. After committing rape, Dabloo Singh made good his escape and his daughter fell senseless, who was taken to his house by the wife of Company Paswan.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet under Section 376 of the Indian Penal Code against the accused Dabloo Singh.

5. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the court of sessions and after commitment and on transfer finally the case came in seisin of the learned Additional Sessions Judge, Lakhisarai for trial.

6. Charge against accused Dabloo Singh was framed under Section 376 of the Indian Penal Code. Charge was read over and explained to the accused by the court to which he pleaded not guilty and claimed to be tried.



7. To substantiate its case, in ocular evidence, the prosecution has examined altogether six prosecution witnesses namely, Anarwa Devi as PW-1, Mogel Yadav as PW-2, victim Vina Devi as PW-3, Raj Muni Devi as PW- 4, informant Pardesi Das as PW-5, and Sidheswar Das as PW-6. Out of the aforesaid witnesses, PW-2 happens to be formal witness, who has proved the formal FIR. One more witness, namely, Dr. Rajkishori Singh, who had examined the victim, has been examined by the court as CW-1.

8. The statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence. The accused has neither adduced any ocular nor documentary evidence in buttress of his case.

9. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict has preferred the present Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge



levelled against the appellant beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellant that the informant does not happen to be eye witness of the occurrence. Likewise, other witnesses examined by the prosecution barring the victim, also do not happen to be eye witness of the occurrence as they had not witnessed the occurrence of committing rape against the victim by the appellant. It is further submitted that doctor, who had examined the victim, has not found any internal or external injury on her person or any sign of rape allegedly committed against her. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellant beyond all reasonable doubt by adducing trustworthy, convincing and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellant by the learned trial court is liable to be set aside and the appellant is entitled to be acquitted.

13. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that the prosecutrix has supported the prosecution case intoto and other witnesses have



also corroborated the factum of finding the victim senseless, stain of blood and semen on her attire and divulgence of the occurrence by the victim to them. Doctor has also found hymen of the victim ruptured and the learned trial court correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

14. From perusal of record, it appears that to substantiate its case, prosecution has examined altogether five material witnesses in the case, namely, PW-1 Anarwa Devi, PW-3 victim Vina Devi, PW-4 Raj Muni Devi, PW-5 Pardesi Das and PW-6 Sidheswar Das. From perusal of testimony of PW-1, PW-4, PW-5 and PW-6, it appears that they do not happen to be eye witness of the occurrence of committing rape against the victim by the appellant as they had not seen the aforesaid occurrence. But, from perusal of testimony of PW-1 Anarwa Devi, who happens to be mother of the victim, it appears that she has stated that on information of occurrence against her daughter, when she arrived at her house, she found her daughter upset. There was scratches and blood stain on her cheek. Her daughter divulged her *inter alia* that Dabloo Singh took her in the wheat



field and shoving her in the field committed rape against her. PW-4 Raj Muni Devi has stated in her examination-in-chief that she had found Vina Devi senseless in the wheat field. There was blood stain on her frock and trouser, while she started lifting her, she divulged her occurrence of committing rape against her by Dabloo Singh. PW-5 informant Pardesi Das has stated in his examination-in-chief that at the time of occurrence, he sent his daughters Kajol and Vina taking firewood to fetch water from the house, but as Kajal was left behind, Vina started making search of her and in the course of search, Dabloo Singh took her in the wheat field of Niranjana Singh gagging her mouth and shoved her in the field and after stripping off her salwar committed rape against her, resultantly, Vina fell senseless and then Dabloo Singh made good his escape. Raj Muni Devi took Vina to his house in the state of senseless and on regaining sense, Vina divulged him the entire occurrence of committing rape against her by the appellant in the wheat field of Niranjana Singh. He has also stated that her nose and mouth was bleeding and there was stain of blood on her pant. PW-6 Sidheswar Das has stated in his examination -in-chief that he also arrived at the house of the informant and found Vina Kumari weeping. On grilling, the wife of Company Singh divulged him about



occurrence of committing rape against Vina by Dabloo Singh. Vina was also taking the name of Dabloo Singh.

15. From perusal of testimony of the aforesaid witnesses, it appears that barring PW-6, all the aforesaid witnesses have stated about divulgence of the occurrence of committing rape against the victim by the appellant in the wheat field of Niranjana Singh by the victim to them. Victim PW-3 Vina Devi has stated in paragraph 6 of her examination-in-chief that she had divulged the occurrence of committing rape against her to the wife of Company Paswan, her mother and her father. Thus, the aforesaid statement of PW-1, PW-4 & PW-5 about divulgence of occurrence of committing rape against her by the appellant in the wheat field of Niranjana Singh by the victim stands corroborated by the victim.

16. Victim PW-3 Vina Devi in her examination-in-chief has stated that on the date of occurrence, she, her parents and her sister Kajal had gone to harvest Khesari crop. Her parents at around 01:00 PM, asked her to take the firewood to house and fetch the water from the house, then she and Kajal rushed to the house taking firewood to fetch the water. But as Kajal did not arrive at the house, she stepped out of her house in search of Kajal, but in vain and while she was regressing to the



house, on the way, Dabloo Singh met her. He caught her hold and shoved her in the wheat field of Jogo Singh and after stripping off her salwar committed rape against her and made good his escape. After the occurrence of rape, she was lying in the field. In the meantime, wife of Company Paswan arrived there and took her to her house. In paragraph 9 of her cross-examination, she has further stated that the accused had pierced his nail on her cheek and neck. She was subjected to lengthy cross-examination, but from perusal of the cross-examination of the victim, I find that nothing convincing and cogent has been elicited in her cross-examination having potential to rule out and create doubt about the sanctity of the aforesaid testimony of the victim. Thus, the aforesaid testimony of the victim appears to be unblemished and wholly reliable.

17. The victim (PW-3) has stated in paragraph 6 of her examination-in-chief that her salwar was stained with blood in the course of occurrence of rape and PW-4 and PW-5 have also found the blood stain on the attire of the victim. From perusal of record, it appears that the attire of the victim was sent to the F.S.L. for its chemical examination. F.S.L. report is on record, but the same has not been got exhibited by the prosecution. Hence, for want of exhibition, the aforesaid F.S.L.



report cannot be looked into and considered as the defence has been deprived of the opportunity of making cross -examination on the aforesaid report. But despite of that, victim and other witnesses have unanimously stated about finding of blood stain on the attire of the victim.

18. From perusal of medical evidence, it appears that the victim was examined by the Dr. Rajkishori Singh after 24 hours of the occurrence. Though, doctor has not found any internal or external injury on the person of the victim and no evidence of rape, but has found her hymen ruptured and has opined that intercourse cannot be ruled out. Thus, in my considered opinion, the aforesaid ocular evidence also stands corroborated by the medical evidence. Though, doctor has not found any blood stain or semen on the person of the victim, but as the victim was examined after 24 hours of the occurrence, in the meantime, she might have done urination several times and washed her face, so the possibility of finding the blood stain or semen on the person of the victim appears to be very bleak and not finding of any blood stain or semen on the person of the victim by the doctor examining the victim after 24 hours of occurrence, in my considered opinion, is not going to affect the merit of the case by any stretch of imagination.



19. In the facts and circumstances of the case, I find and hold that the prosecution has succeeded to bring home the charge leveled against the appellant under Section 376 of I.P.C. beyond all reasonable doubt by adducing consistent, trustworthy and reliable ocular and medical evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned trial court does not warrant any interference by this Court and is upheld. Accordingly, this appeal is dismissed. As the appellant is on bail, his bail bond is cancelled and is directed to be taken into custody forthwith.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	N.A.F.R.
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