

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.188 of 1995

Arising out of Judgment dated 31st May 1995 passed by learned Sessions Judge, Madhubani in S.T. No. 227/93.

=====

Shivnandan Yadav, son of Mahabir Yadav, resident of village – Hirapatti, P.S. – Rajnagar, District – Madhubani.

.... Appellant

Versus

The State of Bihar

.... Respondent

=====

Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, A.P.P.

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 05-04-2018

Heard learned counsel for the appellant and learned A.P.P. representing the State.

2. The sole appellant in the present appeal has been convicted for an offence under Section 376 of the Indian Penal Code vide judgment dated 31st May, 1995 passed by learned Sessions Judge, Madhubani in Session Trial No. 227 of 1993, he has been sentenced to undergo imprisonment for life.

3. The prosecution case is based on the fardbeyan of Nuro Khatoon, daughter of Md. Ataullah Sah of village – Hirapatti in the District of Madhubani. She was aged about 10 years at the time of occurrence. On 20.06.1993 at



about 7.00 a.m. she got recorded her statement in injured condition in presence of her mother and co-villagers. According to her, on 19.06.1993 at about 9.00 p.m., while she was sleeping with her mother in the Varandah, at about 11.00 p.m., this appellant came there, pushed cloths in her mouth and took her in the patio (Aangan) of the house. The informant started crying but her voice could not come out, there was a lantern in the Varandah, and in the light of said lantern, she could identify the appellant, who took a knife, cut down her cloth, pulled down the pant and penetrated his private part in the private part of the informant. The informant was crying, protesting, she was bleeding out of pain. After sometime, the appellant left him, thereafter she cried, her mother woke up and then on hulla the neighbours namely, (1) Jawahar Shah and (2) Md. Majid Shah along with other co-villagers came running there. They saw Shiv Nandan Yadav (the appellant) fleeing away from her house. She was taken to Rajnagar Hospital where she was under treatment. On the basis of the fardbeyan (Exhibit-1) of the victim (P.W.7), a First Information Report (Exhibit-2) giving rise to Rajnagar P.S. Case No. 66/1993 dated 20.06.1993 under Section 376 of the Indian Penal Code was registered.

4. After investigation, police submitted a charge-



sheet against the accused, cognizance was taken and thereafter trial begun. The victim Nuro Khatoon (P.W.7) deposed in course of trial, she identified the accused, narrated the entire story once again and in course of her cross examination she withstood the test without there being any contradiction in her story.

5. Apart from the victim (informant) the prosecution examined altogether 8 witnesses. P.Ws.1, 2, 3 and 4 became hostile, but P.W.5 Jubaida Khatoon who happened to be the mother of the victim girl supported the prosecution story to some extent but she was also declared hostile. Her evidence, however, shows that she woke up on hearing the cries of Nuro Khatoon coming from the Aangan, when she went there and found that she was stripped of her pant, her pant was cut and she was lying unconscious. P.W.6 Smt. Chandrakala Devi had assisted Dr. Gopeshwar Kumar Ghosh (P.W.9) in the examination of the victim girl on 20.06.1993. The Investigating Officer (P.W.8) has stated that in course of inspection of the place of occurrence he had found blood fallen in the Aangan, he had seized the blood stained earth from there and prepared the seizure list (Exhibit-3). The evidence of Dr. Gopeshwar Ghosh (P.W.9) has been dealt by the learned Trial Court. The evidence of doctor shows that actually Nuro



Khatoon was not only raped but was subjected to barbarism in the commission of rape. In his evidence P.W.9 has stated that he had examined the informant on 20.06.1993 and had found the following injuries on her person : - “Blood was oozing from her vagina, posterior of vagina was torn up to 2”, semen was found in the vagina. There was also tear of the anterior wall of anal canal which was extended up to 2” making the vaginal canal and anal canal as one. Stool was coming out through vagina. The doctor clearly opined that the victim girl was raped within four hours of the examination.

6. On consideration of the entire evidence on the record, the learned trial court convicted the accused for the offences under Section 376 IPC and sentenced him to undergo life imprisonment.

7. In appeal before us, learned counsel representing the sole appellant submits that the mother of the victim has stated that there was no lantern in the Aangan and she had not seen the appellant fleeing away from her house. Learned counsel submits that there was no independent evidence to support the identification of this accused-appellant and in fact he has been falsely implicated in the present case. Learned counsel submits that DW.1 Arbind Yadav has deposed that there are four tolas in the village and there is



enmity between Yadav Tola and Muslim Tola. It is submitted that in absence of identification of the appellant it would not be just and proper to convict him because the victim girl seems to have falsely implicated this appellant in absence of proper identification. It is because father of this appellant is the leader of Yadavs.

8. On the other hand, learned A.P.P. representing the State submits that in this case the victim girl who was only 10 years old at the time of alleged occurrence has been subjected to rape in a barbaric manner. It is submitted that there is no reason why the sole appellant will be named by the victim girl. The statement of the victim girl, the Investigating Officer and the injuries proved by the doctor as also the seizure list prepared by the I.O. on the place of occurrence are the evidences beyond all reasonable doubts and the trial court has rightly convicted the sole appellant.

9. Having heard learned counsel for the appellant as well as learned A.P.P. representing the State and on perusal of the records we find that the sole appellant has been identified by the victim girl aged about 10 years when was subjected to rape. The I.O. found the blood on the place of occurrence, he had prepared the seizure list of the blood stained earth and the fact that the victim girl was subjected to



rape brutally and barbarically is also proved from the injury report proved by P.W.9. There are clinching materials in form of evidence on the record and in our considered opinion the trial court has committed no error in appreciating the evidences on the record. We do not find any reason to interfere with the impugned judgment.

10. The appeal is dismissed.

11. The appellant, who is on bail, is directed to surrender forthwith, failing which he will be taken in custody by the Superintendent of Police, Madhubani within a period of seven days and will be sent to jail for undergoing the remaining sentence. A copy of this order be sent to learned Chief Judicial Magistrate, Madhubani to issue warrant of arrest against the appellant.

(Rajendra Menon, CJ.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.04.2018
Transmission Date	17.04.2018

