

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1082 of 2012

Arising Out of PS. Case No.-150 Year-2009 Thana- MARHAURA District- Saran

Deodhari Rai @ Don S/o Shivjee Rai, R/o Village-Babu Ke Ashaiya, P.S.-
Marhaura, District-Saran (Bihar).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Manoj Kumar

For the Respondent/s : Mr. Ashwini Kumar Sinha, APP

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date : 29-03-2018

Heard learned counsel for the appellant and learned
APP for the State.

2. This appeal has been preferred against the judgment and order of conviction dated 22.05.2012 and order of sentence dated 23.05.2012 passed by Additional Sessions Judge-IV, Saran at Chapra in Sessions Trial No. 52 of 2010 arising out of Marhaura P.S. Case no. 150 of 2009, whereby the learned trial Court convicted the accused Deodhari Rai @ Don under Section 376(2)(F) of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life and also slapped him with a fine of Rs. 10,000/- and in default of



payment of fine to further undergo R.I. for three months under the aforesaid Section.

3. The factual matrix of the case is that Marhaura P.S. Case no. 150 of 2009 was instituted under Sections 376/307 of the Indian Penal Code against accused Deodhari Rai @ Don on the basis of fardbeyan of Devki Devi W/o Ram Jit Sah recorded by S.I. Sardendu Sarat, S.H.O. P.S. Marhaura dated 08.08.2009 at 00:45 hours at P.H.C., Marhaura with the allegation, in succinct that while the daughter of the informant namely, Prateema Kumari aged about six years was playing in front of her house on 07.08.2009 at around 06:00 PM, she abruptly went missing. They made hectic search for her, but in vain. At around 11:00 PM, listening sound of barking of the dog in the orchard located towards North of her house, her co-villager namely, Jay Prakash Sah flashed torch and spotted her daughter nude and weeping. Then, he took her daughter to her home. On grilling, she divulged that co-villager, Deodhari Rai @ Don took her in the orchard and shoving her on the ground committed rape against her and pressed her neck. She found blood on the thigh and face of her daughter. Then, she made search of Deodhari Rai @ Don, who was nabbed by the



villagers on chase, and on quizzing, he confessed his guilt, then the villagers started assaulting him, but he was anyhow saved by some of them and produced before police and sent her daughter to the hospital. It is claimed by the informant that Deodhari Rai @ Don committed rape against her minor daughter taking her in the orchard by enticing her and tried to eliminate her by pressing her neck.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the accused namely, Deodhari Rai @ Don.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the aforesaid accused and committed the case to the court of sessions and after commitment and on transfer finally the case came in *seisin* of the Additional Sessions Judge-IV, Saran at Chapra for trial.

6. Charge against accused Deodhari Rai @ Don was framed under Sections 376 and 307 of the Indian Penal Code. Charges were read over and explained to him to which he pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether eleven prosecution



witnesses namely, Ramjeet Sah as PW-1, victim Prateema Kumari as PW-2, Jay Prakash Sah as PW-3, Informant Devki Devi as PW-4, Gyani Sah as PW-5, Sipahi Sah as PW-6, Dr. Jaishree Prasad, who examined the victim as PW-7, Shatrughan Prasad as PW-8, Dr. Kameshwar Shukla Vidyarthi who also examined the victim as PW-9, I.O. Shardendu Sarad as PW-10 and Dr. Pratima Gupta who also examined the victim as PW-11. In documentary evidence, the prosecution has filed and proved some documents.

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 charges levelled against the appellant beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellant that no such occurrence as alleged ever took place. The appellant has been falsely implicated in the case due to dirty village politics. As a matter of fact, the victim might have gone to attend the call of nature and has fallen down on the ground and sustained injuries on her private part. There is no eye witness of the occurrence. The victim is aged about six years old, so it is quite impossible to commit rape against her by the appellant. The doctor has also not found any foreign hair on the private part of the victim and any spermatozoa in her vaginal swab and appears to have given finding about possibility of rape merely on the basis of injury on the person of the victim and learned trial court has also convicted the appellant merely on the basis of such flimsy and shaky medical report. None had seen the appellant with the victim and none had listened any alarm of the victim at the time of committing alleged offence against her. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case by adducing trustworthy, consistent 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 informant and victim have fully supported the prosecution case. Other witnesses examined by the prosecution have also corroborated the occurrence and the ocular evidence also stand corroborated by the medical evidence and after correctly appreciating the facts and material on record, the learned trial court 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 testimony of the victim Prateema Kumari examined in the case as PW-2 it appears that she has stated in her examination-in-chief that on the date of occurrence, Deodhari Rai @ Don took her by enticing her to accord *Dalmot*. He accorded *Dalmot* and took her towards orchard and committed rape against her. Her thigh was stained with blood. She has identified the appellant in the



dock. She has further stated that Jay Prakash Sah (PW-3) took her out from the orchard and rushed her to the hospital. In paragraph 4 of her cross-examination, she has stated that when the appellant was committing rape against her, she had raised alarm and Jay Prakash Sah (PW-3) had rushed in her rescue. The accused had absconded preceding to arrival of Jai Prakash Sah there. In paragraph 6 of her cross-examination, she has further stated that she had divulged to the I.O. that Deodhari Rai @ Don had committed rape against her. In paragraph 8 of her cross-examination, she has also stated that I.O. had seized her blood stained attire. I.O. examined in the case as PW-10 has corroborated the factum of divulgence of name of the appellant as an accused of the occurrence by the victim to him and he has also corroborated the factum of seizure of paint of the victim along with the plastic bag of *Dalmot*, one box of Gul and blue colour bangle from the place of occurrence. Thus, from perusal of the aforesaid testimony of the victim, it appears that she has fully substantiated the commission of occurrence of rape against her by the appellant. She was subjected to cross-examination, but nothing cogent and convincing has elicited in her cross-examination having potential to rule out her aforesaid testimony and to raise any



doubt about veracity of her testimony.

15. Corroborating the aforesaid case of the prosecution and statement of the victim, PW-3 (Jay Prakash Sah) has stated in his examination-in-chief that while he was regressing to her house after shutting down her shop at the time of occurrence, he listened barking sound of the dog. Responding the same, he flashed torch and spotted a child girl in the orchard. Then, he rushed to her. She was nude. Her attire was smeared with grass and there was abrasion on her person and her thigh and abdomen was stained with blood. She was daughter of Ramjeet Sah and she was quite apprehensive. On quizzing, she divulged him that Deodhari Rai @ Don took her on the pretext of according her *Dalmot* and committed rape against her. Then, he took her to her mother. Villagers got infuriated and nabbed Deodhari Rai @ Don from his house. They thrashed him, who confessed his guilt before them. The people, rushed the girl to the Marhaura hospital and doctor referred her to Chapra hospital. The police had recorded his statement. Devki Devi (PW-4) who happens to be mother of the victim and Ramjeet Sah (PW-1) who happens to be father of the victim have unanimously stated in their respective examination-in-chief that their daughter went



missing and villagers made hectic search for her. While, Jay Prakash Sah (PW-3) was regressing to his house shutting down his shop at around 11:00 PM, he noticed a girl weeping in the orchard of Srikant Babu. He took her to their house. On quizzing, she divulged that Deodhari Rai @ Don took her to a shop on the pretext of according *Dalmot* and then in an orchard and committed rape against her. There was blood stain on her thigh and abdomen and her face was swollen. She was rushed to Marhaura hospital, from there, she was referred to Chapra hospital and was got admitted there for treatment. Deodhari Rai @ Don was nabbed by the villagers and was thrashed by them. He confessed his guilt before them. From perusal of aforesaid testimony of PW-1 (Ramjeet Sah) and PW-4 (Devki Devi), it appears that the aforesaid two witnesses have also corroborated the offence of committing rape against their daughter Prateema Kumari by the appellant. The aforesaid witnesses were also subjected to cross-examination, but barring some minor contradiction, nothing cogent and convincing has elicited in their cross-examination having potential to rule out their aforesaid testimony. Though, there are some minor contradictions in their testimony, but as their statements were recorded couple of months later to the



occurrence, so such contradictions are bound to occur in the testimony of natural witness as the powers of perceiving, retention and reproduction of any fact varies from man to man and is also affected by efflux of time.

16. I.O. Shardendu Sarad (PW-10) has established the place of occurrence and seizure of the aforesaid articles from the place of occurrence and identification of the aforesaid articles by the father of the victim.

17. From perusal of the injury report, medical examination report of the victim and testimony of Dr. Kameshwar Shukla Vidyarthi (PW-9) who has examined the victim at P.H.C., Marhaura and that of Dr. Jaishree Prasad (PW-7) and Dr. Pratima Gupta (PW-11) who has conducted medical examination of the victim, it appears that Dr. Kameshwar Shukla Vidyarthi, M.O., P.H.C., Marhaura has reported the finding of: (i) A swelling on her Vulva of the dimension of 1/2"x1/8" (ii) An abrasion on her right thigh of the dimension of 1/8"x1/8" (iii) A swelling on her left cheek of the dimension of "2 x 2" (iv) Bleeding from the vagina of the victim. While Dr. Jaishree Prasad and Dr. Pratima Gupta who have medically examined the victim have found (i) One



abrasion of the dimension of 1/2"x1/4" on upper part of her neck below the right ear (ii) One abrasion of the dimension of 1"x1/4" on her left cheek (iii) One abrasion of the dimension of 1 1/2"x1/4" on left cheek of the victim. Besides the aforesaid injuries on examination of her private part, they have also found her labia majora and labia minora lacerated which is red and edematous, Hymen-torn. Fourchette and perineum lacerated, torn to the extent upto anus. Slight bleeding from the lacerated Hymen, Fourchette and perineum and stool was coming from the vagina. The aforesaid injury report and medical examination report has been proved by the said doctors marked as Ext-4 and Ext-2 respectively. The aforesaid doctors considering the aforesaid injuries on the person of the victim, have opined that the possibility of rape, cannot be denied. Albeit, no spermatozoa was found in the vaginal swab of the victim, but as the occurrence is of around 11:00 AM on 7.08.2009 and vaginal swab of the victim was taken by the doctor on 08.08.2009 at around 02:40 PM i.e. after around 16 hours of the occurrence and in the meantime, the victim must have urinated couple of times, so possibility of finding any spermatozoa in the vaginal swab of the victim after lapse of the aforesaid span of time is very feeble as the spermatozoa



present in the vaginal swab would have been washed out by that time. Thus, the aforesaid ocular evidence of the prosecution also stands corroborated by the medical evidence.

18. In the aforesaid facts and circumstances of the case, we find and hold that the prosecution has succeeded to substantiate the prosecution case and charges levelled against the appellant beyond all reasonable doubts by adducing convincing, cogent, consistent and worth credence evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned trial court is upheld and this Criminal Appeal is dismissed accordingly.

(Dr. Ravi Ranjan, J)

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	21-05-2018
Transmission Date	21-05-2018

