

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 525 of 2013

Arising Out of PS. Case No.- 44 Year- 2011 Thana- Salkhuwa District- Saharsa

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Santosh Singh, son of Ashok Singh, resident of village- Bishunpur, P.S.-
Beldaur, District- Khagaria.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant	:	Mr. Krisranjan, Advocate Mr. Suman Kumar Jha, Advocate Miss Ankita, Advocate
For the State	:	Mr. S. N. Prasad (A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 11-10-2018

The sole appellant has preferred the present appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘Cr.P.C.’) against the judgment of his conviction and sentence in Sessions Trial No. 18 of 2013 (arising out of Salkhuwa P.S. Case No. 44 of 2011). The appellant by judgment dated 11-04-2013 was convicted for commission of offence under Section 376 of the Indian Penal Code, 1860 (hereinafter referred to as ‘I.P.C.’) and by order dated 15-04-2013, under Section 376 of the I.P.C., he has been sentenced to undergo “Imprisonment For Life” and to pay a fine



of Rs. 50,000/- (Fifty thousand), out of which, Rs. 45,000/- (Forty five thousand) was directed to be paid to the victim. In case of default of payment of fine, the appellant was directed to further undergo rigorous imprisonment for one year. The judgment of conviction and sentence was passed by Sri Ram Pratap Asthana, learned Adhoc Addl. Sessions Judge – I, Saharsa (hereinafter referred to as ‘Trial Judge’).

2. Short fact of the case is that on 13-04-2011 at 11:50 AM in Sadar Hospital, Saharsa, the Sub-inspector of Police Sri D.N. Ray of Saharsa Sadar Police Station recorded *fardbeyan* of the victim (P.W.3) aged about 8 years. In the *fardbeyan*, the victim (P.W.3) disclosed that on 12-04-2011 at about 2:30 P.M., she had purchased biscuit from his village grocery shop of Bouku Sada and she was eating the same. At the same time, Santosh Singh (appellant) came there and asked her that her father was calling her in maize field and thereafter, she was carried to the maize field. While she reached near the maize field, the appellant forcibly caught her and carried her inside the maize field. He tied her both hands and also mouth and thereafter, committed rape with her. She was crying, but she was pressed by the appellant. After some time, Santosh (appellant) left her and while crying anyhow, she reached to her house and



narrated all the happening to her mother and father. After noticing seriousness, her mother, father and some members of the society carried her to Sonebarsa Sadar Hospital. Thereafter, from Sonebarsa Hospital, she was referred to Sadar Hospital, Saharsa, where she was under-treatment at the time of her *fardbeyan*. The said *fardbeyan* was read over to her and after finding it correct, she put her thumb impression and as a witness, her mother Rua Devi (P.W.2) also put her thumb impression. The said *fardbeyan* was also got signed by other two witnesses, namely, Tiro Sah and Kailash Saha, who were not examined. After recording *fardbeyan*, the said *fardbeyan* was forwarded to S.H.O. Salkhuwa (Banma Itahari O.P.).

3. On the basis of said *fardbeyan*, on 14-04-2011 at 10:15 AM, a formal F.I.R., vide Salkhuwa P.S. Case No. 44 of 2011, was registered under Sections 341/376 of the I.P.C against sole appellant. The police thereafter investigated the case, recorded statement and tried to apprehend the accused-appellant, but he remained absconder and finally, after completion of processes under Sections 82/83 of the Cr.P.C., on 31-10-2011 chargesheet was submitted against sole appellant and on 13-08-2012, learned Chief Judicial Magistrate, Saharsa took cognizance of the offence. Thereafter, on 02-01-2013, after



completion of all formality under Section 207 of the Cr.P.C., the case was committed to the court of sessions and as such, it was numbered as Sessions Trial No. 18 of 2013. In the case, on 16-01-2013, charge under Section 376 of the I.P.C. was framed against the appellant, but the appellant denied the charge and claimed to face trial.

4. During trial, to establish its case on behalf of the prosecution, altogether eight witnesses were examined. Out of eight witnesses, P.W.1 Suraji Devi is the owner of the shop, from where, the victim had purchased biscuit just prior to the occurrence. P.W.2 Rua Devi is the mother of the victim. P.W.3 is the victim, who at the time of occurrence, was aged about eight years. P.W.4 Bablu Kumar is younger brother of the victim, who has been examined on the point that he was also there with the victim and after some distance, he was compelled to return back by the appellant. P.W.5 Dr. Karuna Kumari on 13-04-2011 was posted as Medical Officer in Sadar Hospital, Saharsa and she was one of the member of the Medical Board, which was constituted by the order of the Civil Surgeon, for examining the age of the victim, since she was minor. She has proved the injury report regarding injury on the person of the victim and it was marked as Ext.1. P.W.6 Dr. Ramesh Chandra Jha and P.W.7



Dr. Vinay Kumar Singh, both were posted as Medical Officer in Sadar Hospital, Saharsa on 13-04-2011 and were members of the Medical Board along with P.W.5 Dr. Karuna Kumari. P.W.7 Dr. Vinay Kumar Singh has proved his signature on the injury report, which was marked as Ext.2/1. P.W.8 S.I. Shivshankar Pathak is the investigating officer, who investigated the case, got recorded the statement of the victim under Section 164 of the Cr.P.C. and finally, with the approval of the senior officer, he submitted chargesheet.

5. After completion of prosecution evidence, on 06-03-2013, evidences and circumstances collected during trial were explained to the appellant and his statement under Section 313 of the Cr.P.C. was recorded, in which, he claimed to be innocent and also from defence side, altogether five witnesses, namely D.W.1 Laleshwar Singh, D.W.2 Jagdish Singh, D.W.3 Shankar Singh, D.W.4 Ghanshyam Singh and D.W.5 Ashok Singh were examined. The defence witnesses have primarily deposed, as if, the case was falsely instituted, as per instance of the father of the victim, with whom, there was some animosity with the appellant.

6. Sri Krisranjan, learned counsel assisted by Sri Suman Kumar Jha, learned counsel for the appellant, after



placing entire evidence, has argued that prosecution has not been able to establish its case beyond all reasonable doubt and as such, it was a fit case for either passing order of acquittal or acquitting the appellant by way of extending benefit of doubt. He has argued that the age of the victim during the whole trial was under dispute. He submits that in the *fardbeyan*, the victim had disclosed her age as 8 years old, in her statement recorded under Section 164 of the Cr.P.C., she disclosed her age as 8 years, but at the time of deposition, she disclosed her age as 13 years, whereas the Medical Board had noticed the age of the victim in between 8 and 9 years. According to learned counsel for the appellant, since the age of the victim was shown in variance, certainly suspicion can be raised on the prosecution case. He has further argued that the Medical Board, which examined the victim, in its report has not mentioned any identification mark of the victim and as such, according to learned counsel for the appellant, it appears that in the case, some other person was examined by the Medical Board, not the victim herself. According to learned counsel for the appellant, the prosecution has not been able to establish the case that victim was actually examined by the Medical Board or not.



7. Learned counsel for the appellant has also argued that it is case of the prosecution right from the very beginning that firstly the victim was carried to Sonbarsa Hospital (Primary Health Centre) and thereafter, she was referred to Sadar Hospital, Saharsa, but during trial, the prosecution has not brought on record any chit of paper regarding reference by the Primary Health Centre or any report regarding injury on the person of the victim.

8. Sri Krisranjan, learned counsel for the appellant has further argued that in the case, prosecution has miserably failed to establish the place of occurrence. He submits that it is case of the prosecution as well as victim that she was raped in the maize field, however the investigating officer, while visited the second place of occurrence, which is the main place of occurrence where alleged rape was committed, he had not noticed any sign of rape or any trampling of maize plant and as such, in absence of establishment of place of occurrence, the prosecution case may be considered as doubtful. He further submits that in the evidence of victim, it has come that her under-garment was soaked with the blood, but no material exhibit has been brought on record. Regarding statement of the victim recorded under Section 164 of the Cr.P.C., it has been argued that the



prosecution had developed the story from the original case i.e. *fardbeyan*. Lastly, it has been argued that this Court may take lenient view on the point of sentence of the appellant considering the fact that appellant is father of two children as well as the fact that he is languishing in jail since 02-07-2012. On aforesaid ground, it has been argued that prosecution case appears to be doubtful and as such, either this Court by way of extending the benefit of doubt may acquit the appellant or alternatively taking lenient view, period of sentence may be reduced.

9. Sri S.N. Prasad, learned Addl. Public Prosecutor submits that the prosecution has established its case beyond all reasonable doubt. He submits that right from the very beginning, each and every fact has been brought on record to show that the victim, who was a minor and on the date of occurrence, she was only aged about 8 years, was on false persuasion was carried by the appellant to a maize field and thereafter, brutally, she was raped by the appellant, who was not in his early age, but he was father of two children. According to learned Addl. Public Prosecutor, the evidence of victim has been corroborated by the shop-keeper from where the victim had purchased biscuit and younger brother of the victim, who followed the victim while



she was being carried by the appellant to some extent, however after some distance, he (younger brother) was threatened and forced to return back by the appellant.

10. Learned Addl. Public Prosecutor further submits that the oral evidence has been substantiated by the medical evidence. He submits that while the victim was being examined, the doctor had noticed that from her internal part, even at the time of examination, blood was coming out and there was serious injury on her private part. The case of rape has been established by oral as well as medical evidence. He further submits that in such cases, the learned Trial Judge was required to pass stringent order of sentence, but it appears that learned Trial Judge has taken lenient view in the matter and as such, instead of imposing 'death sentence', he has passed the sentence of 'life imprisonment', whereas the appellant is required to remain in custody till his last breath.

11. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record. Before proceeding, it would be necessary to firstly refer what the victim, who was raped by the appellant, had deposed during the trial in her evidence.



12. The victim was examined as P.W.3. In her evidence, she stated that the offence was committed with her by the appellant (Santosh Singh). She also identified Santosh Singh (appellant) in the court. She stated that police had recorded her statement and she was examined by doctor in Saharsa hospital. On the statement recorded by the police, she had put her thumb impression, whereas she deposed that she was knowing to put signature. She stated that she was eating biscuit near the school, where Santosh Singh (appellant) arrived and told her that her father was calling. She stated that she was frightened and as such, it was difficult for her to go, then the appellant carried her and thereafter, she noticed that her father was not present in the maize field. She was thrashed by the appellant and by गमछा (*gamacha*), her both hands and mouth were tied. She stated that Bablu (P.W.4), her younger brother, was also there. Bablu also wanted to go with her, but by abusing, he was forced to return back and thereafter, his brother fled. She stated that after rape, she was examined by the doctor, then police arrived. She further, in her cross-examination, stated that her statement was earlier recorded in court also. It appears that some inconsistency was found, but that was negligible. In paragraph – 4 of her cross-examination, she disclosed that her father had already died and



this was the reason that he has not come forward to depose in the case.

13. P.W.2 Rua Devi is the mother of the victim. She deposed that on the date and time of occurrence, her both children were eating biscuit near the school, then appellant persuaded her daughter (victim) to go to maize field on the plea that her father was calling her. Thereafter, the appellant carried the victim to maize field. She was at the time of occurrence aged about 8 years and her hands & mouth were tied by गमछा (*gamacha*) and thereafter, she was forcibly raped. Anyhow by way of crying, subsequently her daughter came back and thereafter she narrated all the fact regarding commission of rape by the appellant. She stated that her statement was also recorded by the police. The victim was examined in hospital. This witness has categorically stated that she was narrated entire story by the victim and as such, though this witness was cross-examined at length, but on going through the same, we do not find any reason to see her evidence with doubt.

14. P.W.1 Suraji Devi is the shop-owner, from where, the victim had purchased biscuit. She stated that at the time of occurrence, the victim was aged about 8-9 years. She stated that the victim with her brother Bablu (P.W.4) both were eating



biscuit. Thereafter, the appellant arrived and he carried her to the maize field and she stated that the appellant had committed a crime. This witness was also cross-examined, but nothing was brought on record to see her evidence with any doubt.

15. P.W.4 Bablu Kumar, younger brother of the victim, on the date of evidence was aged about 8 years. His evidence was recorded on 4th February, 2013, whereas the date of alleged occurrence was 12-04-2011. Meaning thereby that on the date of occurrence, this witness was almost about six years old. Before recording his evidence, the learned Trial Judge tested the fact as to whether this child witness was in a position to understand the thing or not and after being satisfied, the learned Trial Judge recorded his evidence. P.W.4 in his evidence stated almost in similar manner like the victim to the extent that he was also following the victim, but he was scolded by the appellant and threatened to return back and thereafter, he returned back. In paragraph – 3 of his cross-examination, his attention was drawn to his previous statement, but nothing has come to create any doubt on his evidence.

16. In this case, the evidence of P.W.5 to P.W.7 has got much relevance, since they examined the victim and also examined about the age of the victim. P.W.5 Dr. Karuna Kumari



on 13-04-2011 was posted as Medical Officer, Sadar Hospital, Saharsa and on the same date at 9:30 PM, she examined the victim. In her evidence, she has disclosed the name of victim as well as her father's name and her address, as resident of Laxminia, P.S. Banama Itahari, District – Saharsa. In her examination, she found following injury:

“On Examination:

Patient conscious but very apprehensive. P.- 100/Min. B.P. 100/70, Chest – NAD, Breast & Axillary hairs not develop;

Perineal Examination:

Pubic hairs not develop. Fresh blood coming out from the vaginal orific, sign of injury present around the vaginal orific.

Per vaginal Examination:

Patient become apprehensive during the vaginal examination. Vagina is reddish & tender. Hymen completely ruptured. Sign of injury present around the vaginal orific, vagina & Hymen;

Pathological Examination report of Vaginal Swab: As per report of Dr. R.C. Jha, (i) no spermatozoa dead or alive seen; (ii) Epithelial cells 2.3 cells/HPF; (iii) Pus cell – 1- 2/ HPF & (iv) RBC cells 10-12 cells/ HPF;

On the basis of X-ray of pelvic & wrist the age of victim is between 8 to 9 years (Eight to nine years).

Opinion:

We the members of Medical Board are of the opinion that there is completely confirmatory evidence of rape because sign of injury present around the vaginal orific, vagina & Hymen. Hymen completely ruptured, fresh bleeding coming out from the vagina & there is no foreign body inside the vagina.

Spermatozoa are not found on the pathological examination of vaginal swabs because it may be washed out during the menstruation or through the bleeding from vagina.”



The doctor i.e. Dr. Karuna Kumari stated that she was one of the member of the Medical Board, which was constituted for examining the victim. She stated that other members were Dr. R.C. Jha and Dr. Vinay Kumar Singh, who are P.W.6 and P.W.7 respectively. This witness stated that the report was prepared by her and it was marked as Ext.1. In cross-examination, she stated that victim was referred by Primary Health Centre, Sonbarsa. On examination of evidence of P.W.5, there is no reason to raise any doubt on the prosecution case that the victim, who was aged about 8-9 years, was brutally raped.

17. P.W.6 Dr. Ramesh Chandra Jha on 13-04-2011 was one of the member of the Medical Board, which was constituted for examining the injury of the victim. He stated that after finding the report as correct, he put his signature on the report, which was marked as Ext. 2. On his cross-examination, he clarified regarding identification of the injured victim that "firstly fact is to be recorded in the record of the hospital and thereafter it is being examined". Meaning thereby that the plea, which has been taken by learned counsel for the appellant that there is no identification, has got no relevance. Moreover, P.W.5 has categorically stated regarding the injured, who was examined by the Board, with parentage as well as address.



18. P.W.7 Dr. Vinay Kumar Singh on 13-04-2011 was posted as Medical Officer, Sadar Hosptial, Saharsa. He deposed that on 13-04-2011, on the order of Civil Surgeon, a Medical Board was constituted of three members to examine the victim. He disclosed that in the said Board, one of the doctor i.e. Dr. Karuna Kumari was Gynaecologist. He further deposed that the case was referred from Primary Health Centre, Sonbarsa with registration number. The age of the victim was ascertained on the basis of X-ray report and pubic hair. He proved his signature on the same, which was marked as Ext. 2/1. In cross-examination, he clarified that medical examination was done on 13-04-2011 not on 12-04-2011.

19. P.W.8 Shiv Shankar Pathak on 13-04-2011 was posted as incharge of Banma Itahari O.P. On which date, he had received *fardbeyan*, which was forwarded by Sadar Hosptial, Saharsa, which was received, vide forwarding letter no. GP151/11 dated 13-04-2011. He stated that on the basis of said *fardbeyan*, the present formal F.I.R. was lodged. He proved the *fardbeyan*, which was written by Sub-Inspector D.N.Ray. The said *fardbeyan* was marked as Ext.3. He also proved the formal F.I.R., which was under the writing and signature of officer incharge of Salkhuwa Police Station S.I. Surendra Pandit and



formal F.I.R. was marked as Ext.4. Thereafter, investigation was entrusted to him and while investigating the case, he reached to Mali Chowk. Since it was late night, he stayed there and again, on 14-04-2011, he proceeded to the place of occurrence and visited village Laxminia. On inquiry, he noticed that the victim had not returned from the hospital, thereafter, he examined the shop-keeper namely Suraji Devi and recorded statement of Bablu (P.W.4). Then he visited first place of occurrence, which was near the school as well as shop of P.W.1. During investigation, on the next date i.e. on 15-04-2011, on the basis of disclosure made by the victim, he reached the second place of occurrence i.e. maize field, where rape was said to be committed. The second place of occurrence was about 1½ k.m. away from Laxminia village. However, he did not find any material at the place of occurrence. During investigation, he got the statement of the victim recorded under Section 164 of the Cr.P.C. and he proved the same, which was marked as Ext.5. This witness was cross-examined at length and in paragraph – 9 of his cross-examination, he stated that at the place of occurrence, he did not notice any evidence, but he has assigned the reasons that in the maize field plants were at some distance. On the basis of this fact, the submission made by learned



counsel for the appellant that at the place of occurrence, the Investigating Officer had not noticed trampling of maize plants, loses its significance. The investigating officer is very categorical that the maize field was not dense field, but scattered and as such, there was no possibility to notice any trampling.

20. On examination of entire evidence, there is no difficulty in coming to the conclusion that prosecution has proved its case beyond all reasonable doubt. The evidence of victim has been corroborated by the evidence of her mother, evidence of shop-keeper, who is P.W.1 and mainly, on the evidence of member of the Medical Board, consisting of P.W.5 to P.W.7. The Medical Board had noticed injury on the private parts of the victim, whose age was assessed by the Medical Board in between 8 and 9 years. It was stand of the victim as well as her mother that on the date of occurrence, she was eight years old, though a plea was taken by learned counsel for the appellant that at the time of her evidence, she disclosed her age as 13 years. At this juncture, it may be indicated that at the time of deposition, it is not expected that the witness will give exact date of birth, roughly she disclosed her age at the time of evidence i.e. 13 years. But fact remains that occurrence had taken place two years back i.e. in the year 2011. Accordingly,



the objection of the learned counsel for the appellant regarding variance of the age of the victim appears to be insignificant.

21. So far as plea, which has been taken by learned counsel for the appellant that the Medical Board has not recorded any mark of identification, we are of the opinion that such submissions are required to be noticed only for its rejection. P.W.5 Dr. Karuna Kumari has categorically stated that she examined the victim, she (victim) disclosed the name of her father as well as her address. Merely on the ground of absence of any mark of identification in the report, the entire case of the prosecution cannot be disbelieved. It is true that during trial, the prosecution has not produced any report of Primary Health Centre, Sonbarsa, but fact remains that the Medical Board consisting of P.W.5 to P.W.7 is very much consistent that the victim was referred by Primary Health Centre, Sonbarsa and the victim herself was examined by the Medical Board, so absence of any report of Primary Health Centre, Sonbarsa may not create any doubt on the prosecution case and on this ground, prosecution case may not be disbelieved.

22. We have also examined the statement of the victim recorded under Section 164 of the Cr.P.C. It is true that there is some deviation, but such deviation is not sufficient to create any



doubt on the prosecution case. Ofcourse, during trial, altogether five witnesses were examined as defence witness. On going through their evidence, we are of the opinion that on the basis of defence evidence, the evidence of such nature, which has been brought on record by the prosecution, may not be disbelieved.

23. In view of evidence on record, we are of the opinion that learned Trial Judge has rightly passed judgment of conviction. So far as sentence is concerned, though a plea has been taken by learned counsel for the appellant that the appellant is father of two children, the Court is of the opinion that since the appellant is father of two children, commission of rape by him on a minor girl should be treated as much serious and no lenient view can be taken on the point of sentence. We are of the considered opinion that considering the nature of evidence as well as seriousness of offence and brutality, the learned Trial Judge has rightly imposed the sentence of life imprisonment, which requires no interference. We do not find any ground to interfere either with the judgment of conviction or order of sentence.

24. Accordingly, the judgment of conviction dated 11th April, 2013 and order of sentence dated 15th April, 2013 passed in Sessions Trial No. 18 of 2013 (arising out of Salkhuwa P.S.



Case No. 44 of 2011) by Sri Ram Pratap Asthana, learned Adhoc
Addl. Sessions Judge – I, Saharsa is, hereby, approved and
appeal stands dismissed.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

AFR/NAFR	AFR
CAV DATE	NA
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