

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.998 of 2016

In

Criminal Appeal (DB) No.1069 of 2016

Arising Out of PS. Case No.-145 Year-2014 Thana- CHAPRA TOWN District- Saran

Shakil Ahmed Ansari, Son of Late Ahmed Ansari, Resident of Mohalla-
Karmichak, Khanua, P.S- Chapra, District-Saran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant	:Mr. S.R.P. Bakshi, Sr. Advocate. Mr. Pranav Kumar, Advocate. Md. Mussowir, Advocate.
For the Respondent	:Ms. Abha Singh, APP.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 01-08-2018

Heard learned counsel for the appellant and the
State.

2. The appellant has been convicted under Section 6 of the Prevention of Children from Sexual Assault Act, 2012 by judgment dated 19.09.2016 passed by the learned 1st Additional District & Sessions Judge, Saran at Chapra in POCSO Case No. 04 of 2014/CIS (Registration No. 3191 of 2014) and by order dated 22.09.2016, he has been sentenced to undergo R.I. for 10 (ten) years, to pay a fine of Rs. 25,000/- and in default of payment of fine, to further suffer S.I. for a period of six months. Out of the aforesaid fine of Rs. 25,000/- the trial court has directed that Rs. 20,000/- be paid to the parents of the victim and the rest amount of Rs. 5,000/- has been directed to be deposited in the government treasury.



3. The appellant, a school teacher is said to have raped a five year old girl who had gone to school along with her friend, to study.

4. The appellant has been charged under Sections 5 and 6 of the Prevention of Children from Sexual Assault Act, 2012.

5. The case of the prosecution is based on the written report of one Sabrin Khatoon (P.W. 4) who is the mother of the victim. She has alleged in her written report that on 15.05.2014, her daughter (P.W. 5) along with Khushi Parween (P.W. 8) had gone to Ekara Public School and returned home at 12 o'clock in the day. She has further stated that when she saw her daughter limping, she enquired from her the reason for such a different gait. The victim thereafter is stated to have told her that the appellant committed rape upon her in presence of Khushi Parween (P.W. 8). She was also threatened of serious consequences in case she reported the matter to anybody. The daughter of the informant further informed her that after the act committed by the appellant, she started bleeding. Thereafter, the instant case was lodged.

6. On the basis of aforesaid written report a case vide Chapra Town P.S. Case No. 145 of 2014 dated 15.05.2014 was initially instituted for the offence under Section 376 of the IPC. Later Section 4 of the Prevention of Children from Sexual Assault Act, 2012 was also added.

7. The police, after investigation, submitted charge sheet whereupon this case was put up for trial.



8. As has been stated earlier, charges were framed under Sections 5 and 6 of Prevention of Children from Sexual Assault Act, 2012 because the appellant, as alleged had indulged in aggravated sexual assault.

9. The trial court, after examining six witnesses on behalf of the prosecution including the victim, convicted and sentenced the appellant as aforesaid.

10. It has been urged on behalf of the appellant that the judgment and order of conviction is not sustainable in the eyes of law as the conviction has been recorded only on the basis of evidence adduced by near relatives of the victim. It has further been argued that even though P.W. 4/informant had stated in her deposition that around 25 – 30 persons had collected at her house for searching the appellant, none of the independent persons have been brought forth to support the prosecution version. The other grounds raised on behalf of the appellant is that no external injury was found by the Dr. Neela Singh (P.W. 6) but still she has stated in her report that there was definite sign of sexual assault on the victim. In such circumstances, it was suggested by the learned counsel for the appellant, that the medical report was collusive and could not have been relied upon.

11. The other argument raised on behalf of the appellant is that the deposition of the friend of the victim viz. Khushi Parween (P.W. 8) completely falsifies the version of the victim (P.W. 5) and her mother/P.W. 4. The case of the prosecution, through the mouth of P.W. 4, is that the victim



was subjected to sexual act in presence of Khushi Parween (P.W. 8). But Khushi Parween in her deposition has stated that she was in a different room, when her friend/victim was subjected to rape by the appellant. Even the timing of the act as suggested by the witnesses, do not tally and therefore the case appears to be doubtful in all respects.

12. The aforesaid arguments are not acceptable for the reason that there is consistent evidence with regard to the victim, a five year old girl, having been ravished by the appellant.

13. In order to appreciate the case, it would be necessary to briefly refer to the deposition of witnesses.

14. Md. Mukhtar Kuraishi who is an uncle of the victim has been examined as P.W. 1. He has supported the prosecution version in as much as he has stated that his niece/victim who was five year old, is a student of Ekara Public School. On the day of the occurrence, the victim had gone to her school and had come back about 12:00 noon. She had disclosed before her mother that the appellant had raped her. He along with other persons went to the house of the appellant but the appellant was not to be found there.

15. In his cross-examination however, he has stated that he did not visit the school because by that time the school had already been closed. Many persons arrived at his house who accompanied him and the mother of the victim to the police station. The suggestion given to him that no such occurrence had ever taken place and that he and others was



not desirous of allowing the school of which the appellant is the organizer/convener, to be run from the locality, has been denied.

16. Rehana Khatoon who is the grand mother of the friend of the victim viz. Khushi Parween (P.W. 8) has been examined as P.W. 2. She has, in her examination-in-chief proved the developments in the case right from the time that the victim had communicated about her having been raped by the appellant. She has deposed that her grand child viz. P.W. 8 had gone to school along with the victim. The mother of the victim viz. Sabrin Khatoon (P.W. 4) had told her that her daughter was raped by the appellant in presence of the grand daughter of P.W. 2. On such information, P.W. 2 is stated to have questioned her grand daughter (P.W. 8) who also confirmed that the appellant took both, the victim and her grand daughter inside a room, bolted it and committed rape on the victim. She had no idea about any opposition of the local people with respect to running of the aforesaid school in the locality. In her cross-examination, she has denied to have any knowledge about any elderly lady being the daughter of the appellant.

17. Haseena Khatoon is the grand mother of the victim and has been examined as P.W. 3. She has supported the major part of the prosecution version viz. the victim coming back from school and informing her mother that she was subjected to aggravated sexual assault. She has also admitted in her examination-in-chief that many persons had



come to her house for going to the house of the appellant and later, to the police station. She has testified to the fact that the officer-in-charge of the concerned police station had gathered information about the occurrence from the mother of the victim which she had provided to him.

18. Sabrin Khatoon (P.W. 4), who is the mother of the victim has supported the prosecution version in its entirety. However, she has admitted that at her request, one Munna (not examined) had scribed the written report which was read over and explained to her and only after understanding the contents of the same, she put her signature over the aforesaid document.

19. Nothing could be elicited in her cross-examination which could lead anybody to doubt the correctness of the prosecution version. All that has been argued on the basis of the evidence of the aforesaid witnesses is that even though the occurrence is said to have taken place sometimes in the early morning of 15.05.2014, but for some reason or the other, the victim returned home only at 12 o'clock in the day. Immediately after her return, she laid bare the truth in front of her mother but the case was lodged only in the evening at about 6:00 P.M.

20. On the strength of the aforesaid fact, it was urged before the trial court that the case was the result of an afterthought of the relatives of the victim and P.W. 4.

21. The deposition of victim (P.W. 5) assumes great significance so far as this case is concerned. She has



categorically stated that the appellant caught her, took her inside a room and after disrobing her, committed rape upon her. She, on being questioned during the trial as to why did she keep quiet with this act, she had no answer. She has also stated that after she came back home, she did not narrate about the incident to anyone.

22. The evidence of P.W. 5 is to be seen and appreciated only after taking into account that at the relevant time she was only five years of age. She had no explanation for not immediately reacting to the sexual overtures of the appellant. Merely because she did not have any answer as to why she did not run away from the room, her version cannot be doubted.

23. The medical evidence puts a seal of correctness over the version of the victim as well as the informant. Dr. Neela Singh, who has been examined as P.W. 6 at the trial, has deposed that she did not find any injury or mark of violence on the body of the victim but found a stained spot in the inner side of her skin. The private part of the victim was found to be bruised and the inner part of the hymen had become red. Two vaginal swabs were taken and the report (Ext. 2) disclosed that there were dead spermatozoa in the swabs. This clearly establishes that the victim was subjected to sexual attack.

24. The Investigating Officer of this case, Amita Singh has been examined as P.W. 7. She has deposed that she recorded the statement of witnesses and also received the



medical report of the victim and after finding the allegation against the appellant to be true, submitted charge sheet against him. However, in her cross-examination she has stated she could not write the name of the owner of the house in which the school was running.

25. This does not make her deposition doubtful on any score.

26. Khushi Parween, a friend of the victim has been examined as P.W. 8. She has also supported the prosecution version. Only because she has stated that she was in a different room when the occurrence had taken place with the victim, the allegation of sexual assault on P.W. 5 at the hands of appellant cannot be discarded. Assuming that P.W. 8 was not present in the same room, both the victim and her friend were there in the school when the victim was raped.

27. The appellant is non-else but a teacher in a school which is run in the locality of the witnesses and the victim.

28. In such circumstances, non-examination of independent persons cannot be taken into account for holding the prosecution case to be doubtful in any manner. The evidence of the witnesses therefore clearly indicate towards the guilt of the appellant.

29. The trial court has rightly convicted the appellant under Section 6 of the Prevention of Children from Sexual Assault Act, 2012. The verdict of guilt returned by the trial court is hereby affirmed and upheld.



30. Since minimum sentence has been imposed upon the appellant under Section 6 of the Prevention of Children from Sexual Assault Act, 2012, it cannot therefore be said that the sentence is excessive or harsh. Thus, the sentence of the appellant is also affirmed and upheld.

31. The appeal is thus dismissed.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	AFR
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