

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.2292 of 2017**

Arising Out of PS.Case No. -9 Year- 2012 Thana -NATHNAGAR District- BHAGALPUR

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Manoj Kumar Tanti @ Manoj Tanti, son of Medi Tanti, resident of Village- Nasarat Khani P.S. Lalmatiya, District- Bhagalpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Shivesh Chandra Mishra-Advocate

Mr. Davendra Kumar Pandey-Advocate

For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 30-04-2018**

Considering the period of custody in consonance with the sentence so inflicted by the learned lower Court and as prayer for bail has been refused, in the aforesaid background, appeal has been directed to be listed for hearing in out of turn manner and accordingly, listed.

2. Appellant Manoj Kumar Tanti @ Manoj Tanti has been found guilty for an offence punishable under Section 376 of the I.P.C. and sentenced to undergo R. I. for seven years as well as to pay fine appertaining to Rs.10,000/- and in default thereof, to undergo S.I. for six months vide judgment of conviction dated 09.06.2017 and order of sentence dated 13.06.2017 passed by the 1st Additional Sessions Judge, Bhagalpur in Sessions Trial No.542 of 2013.



3. Informant Binod Kumar Mandal, father of the victim (name withheld), PW-6 filed written report on 13.01.2012, disclosing therein that today his daughter (the victim) aged about six years, while was playing by the side of a road was lifted by the appellant and took her to nearby field where committed rape as a result of which, she is under precarious condition.

4. On the basis thereof, Nath Nagar (Lalmatiya) P. S. Case No.09 of 2012 was registered followed with an investigation as well as submission of chargesheet facilitating the trial meeting with ultimate result, subject matter of instant appeal.

5. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has also been pleaded that on account of caste rivalry prevailing in the village, he has been falsely implicated.

6. In order to substantiate its case, prosecution had examined altogether eight PWs, who are PW-1 Ram Prasad Mandal, PW-2 Ganga Mahto, PW-3 Nakul Mandal, PW-4 Sila Devi @ Sushila Devi, PW-5 Binod Kumar Mandal, PW-6 victim, PW-7 Dr. Sima Sinha and PW-8 Munarika Thakur (I.O.). Side by side, had also exhibited as Exhibit-1, signature of informant over written report, Exhibit-1/1, forwarding report, Exhibit-1/2, endorsement, Exhibit-2, injury report, Exhibit-3, formal F.I.R. As stated above, nothing has



been adduced in defence.

7. While assailing the judgment of conviction and sentence, the learned counsel for the appellant has urged that learned lower Court dealt with the facts in issue in mechanical manner without appreciating the evidence judiciously. Had there been such exercise, the appellant would not have been convicted and sentenced.

8. It has also been submitted that none is an eye witness nor any one has claimed that he has seen the appellant while lifting away the victim. Furthermore, finding of the doctor negates the allegation as no injury has been found over the person of the victim, which was to be considering in consonance with her age, which the prosecution had disclosed as six years. Non-presence of injury, more particularly over her private part is indicative of the fact that she was not at all subjected to rape.

9. Apart from this, it has also been submitted that as none of the witnesses have claimed themselves to have seen the appellant lifting the victim, in the aforesaid background, the evidence of the victim, should have been properly scrutinized and for that, at least the mental equilibrium of the victim should have been tested as being a child witness, where she was capable to understand wherein the learned lower Court failed. That means to say, the learned lower Court failed to exercise the judicial act during course of examination of a child, at least to the extent that whether the aforesaid child was



able to perceive the manner of oath as without oath, no evidence could be recorded and in absence thereof, it could not be a substantive evidence. The deposition did not speak with regard to performance of such activity at the end of the learned lower Court, whereupon whatever been deposed at the end of PW-6 is found inadmissible in the eye of law and so, it happens to be a case of no evidence, whereupon appellant should have been acquitted and be acquitted.

10. On the other hand, controverting the submission made on behalf of appellant, it has been submitted on behalf of learned Additional Public Prosecutor that the right stage to raise such plea, the day on which PW-6 was being examined once her examination-in-chief was recorded and then, she was cross-examined, then in that event, such plea is not found available to the appellant as by such activity, even if persisted, found waived. Furthermore, it has also been submitted that from the evidence of victim, it is crystal clear that whatever been asserted, alleged by her, is found uncontroverted as defence failed to discredit.

11. Gone through record, PW-1, PW-2, PW-3 have not supported the case of the prosecution and on account thereof, they all were declared hostile. PW-5, during course of his evidence, is found hesitant and so, in Para-2, he had stated that when he returned from duty in night, he had not talked with anybody. He could not know anything. Then at Para-3, he had stated that Manoj Tanti lifted his



daughter, undressed her and inserted finger inside her private part, whereupon she began to cry. Manoj Tanti had threatened. During cross-examination at Para-5, he had stated that he is not possessing fit mental condition for the present and so, he is unable to detail the occurrence. In Para-6, he had stated that no occurrence took place in his presence.

12. PW-4 is mother, who during course of her evidence, has stated that Manoj Tanti after alluring her daughter, took her to nearby field where he committed rape on her. Then thereafter, instructed her to go to her house and also not to reveal to anybody. Victim came and then, disclosed the whole event. Then thereafter, they have gone to the place of Manoj Tanti and made complaint over which, Manoj Tanti had said that take whatever action, they so desire. During cross-examination at Para-6, she had stated that her husband had not incorporated in the written report that victim was playing at her darwaza before the occurrence. In Para-7, she had narrated that when victim returned back, then she narrated about the occurrence. While she was disclosing, she was severing. She had disclosed that she was raped by Manoj Tanti over which, she had seen her private part after removing her paint and found the same swollen. Though, had not seen blood oozing out there from. She had further stated that she had found white spot over her pant. She had not handed over aforesaid paint at the time of institution of this case. In Para-8, she had



stated that she had not stated before the police that there was white spot over her pant. She had further stated that she had visited the P.O. as shown by the victim. She had not found any incriminating article there. At that very moment, cauliflowers were planted in the field. She had found 5-6 cauliflower plants damaged, which was also shown to the police. In Para-12, she had stated that they took the victim to police station and then, to hospital. Then had denied the suggestion that no such type of occurrence had ever taken place rather due to animosity, this case has been instituted.

13. PW-6 is the victim herself. She had stated that on the alleged date and time of occurrence while she was playing, Manoj Tanti came, lifted her in his lap and then, took away to the field of Raju Chacha where he undressed himself as well as herself and then, indulged in the act of sin, whereupon she shouted. On account of her shouting, he escaped there from and during course thereof, he had directed her not to divulge the same to her parents. She came to her house weeping and disclosed the event to her mother. Her statement was recorded by the police at the place of doctor where she was accompanied by her grandfather. Identified the accused in dock. During cross-examination at Para-6, she had stated that she had not sustained injury over her body. She was raising alarm at the time of occurrence, whereupon accused shut her mouth.

14. PW-7 is the doctor. She had deposed that on



14.01.2012, she had examined the victim and had not found physically, clinically injury over any part of body including private part and her age has been estimated below the age of 18 years. During cross-examination, she had stated that below 18 years means, may be upto 17 years, 11 months or odd days.

15. PW-8 is the I.O., who had stated that after being entrusted with the investigation of the case, he recorded further statement of the informant. Gone to the place of occurrence and inspected the same, which belonged to the field of mother of Lovely. He had found the Tomato, onion plant trampled. Then had identified the same by disclosing boundary as North-field belonging to mother of Lovely, South-field belonging to mother of Lovely, East-field of Raju Mandal, West-Bhulo. Also found cauliflower planted in the field of Raju damaged. Recorded statement of other witnesses. Victim was examined after getting order of the Court, under Section 164 of the Cr.P.C., also recorded her statement, received supervision note and then thereafter, submitted chargesheet. During course of cross-examination, simply has been suggested that after taking bribe, this false case has been manufactured.

16. From the evidence available on the record, it is apparent that victim was not at all cross-examined on the factum of occurrence. So far injury report is concerned, that also happens to be halfheartedly prepared in the background of the fact that there



happens to be no finding of the doctor whether secondary sexual character were developed or not. Whether hymen was present or not, status of the teeth, ossification report and so, it suffers from vagueness. From the evidence of PW-4, mother, she had emphatically corroborated the narration of the victim. In ***Gian Chand & others vs. State of Haryana reported in 2013(4) P.L.J.R. 7 (S.C.)***, it has been held:-

“11. The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by this Court in Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva (Dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204 observing as under:

“31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order



to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.” (Emphasis supplied)

(See also: Ravinder Kumar Sharma v. State of Assam & Ors., AIR 1999 SC 3571; Ghasita Sahu v. State of Madhya Pradesh, AIR 2008 SC 1425; and Rohtash Kumar v. State of Haryana, JT 2013 (8) SC 181).”

17. Because of the fact that there happens to be no cross-examination at the end of the appellant over the manner of occurrence, place of occurrence from the victim. So, in the light of the principle decided by the Hon’ble Apex Court as discussed hereinabove that will tantamount to an admission. Furthermore, it is also evident that P.O. has not been challenged while cross-examining the PW-8, I.O.. Furthermore, it is also evident from the order sheet dated 28.07.2016 as well as 19.01.2017, that no objection has been raised on behalf of appellant nor victim was cross-examined on the score of testifying her mental equilibrium and in likewise manner,



subject to tutoring and so, at the present moment, the same cannot be allowed to be raised as appellant himself is responsible for such lapses.

18. It is needless to say that the evidence of victim, if inspires confidence, would be sufficient to inflict sentence. Moreover, the reason best known to the appellant, victim was not at all subjected to vigorously tested by way of cross-examination on the factum of occurrence on account thereof, is found without any blemish as a result of which, instant appeal lacks merit and is accordingly, dismissed. Appellant is under custody, which he shall till saturation of the sentence.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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