

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.593 of 2016

Arising Out of PS. Case No.-96 Year-2013 Thana- MAKER District- Saran

Raj Kishore Singh Son of Late Subedar Singh resident of Village- Dadanpur,
P.S.- Maker, District- Saran at Chapra.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Ram Binod Singh, Adv
		Mr. Vipin Kumar Singh, Adv.
For the Respondent/s	:	Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

19-09-2019

Appellant, Raj Kishore Singh, vide judgment of conviction dated 12.07.2016 and order of sentence dated 13.07.2016, has been found guilty for an offence punishable under Section 10 of the POCSO Act and sentenced to undergo RI for five years as well as to pay fine appertaining to Rs. 10,000/- in default thereof, to undergo SI for six months, additionally, by the 1st Additional Sessions Judge, Saran at Chapra in POCSO Case No. 74/2014 arising out of Maker PS Case No. 96/2013.

2. Bindu Devi (PW 4) filed a written report on 12.11.2013 disclosing therein that her daughter (name withheld) (PW 3) aged about six years, has been sexually exploited by Raj Kishore Singh (appellant) in between March 2013 to July 2013,



who happens to be cousin grand-father. During the aforesaid intervening period, the victim was allured. Sometimes, she was given Rs. 2-5/-, sometimes, was provided with chocolates with other items and under the garb of aforesaid seductive activity, succeeded in satisfying his lust. At some occasion, she (victim) was threatened that in case, of disclosure, she will be given a tough lesson. One day, in the month of July 2013, she (victim) was weeping. She (PW 4) seeing the same, interrogated whereupon, the victim disclosed that Raj Kishore Baba used to commit sin with her, as a result of which, she is suffering from acute pain in her genital. She wanted to approach the police but, the accused confessed his guilt and further, requested two persons of the village to get the matter pacified. Then, she stated that her guardian (husband) was not available at the house. After coming thereof, the written report is being filed.

3. After registration of Maker PS Case No. 96/2013, investigation commenced and concluded by way of submission of charge-sheet, facilitating the trial, meeting with the ultimate result, subject matter of the instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has further been stated that



the grand-father of the victim as well as appellant happen to be full brother, having land dispute amongst them and for that, a Panchayati was there but, after having relevant part of the undertaking cut, some portion has been introduced malafidely, intentionally in the background of land dispute with an intention to coerce the appellant/accused to give up his claim over the land, though, no such kind of event ever materialized. In order to substantiate the same one DW has also been examined.

5. In order to substantiate its case, the prosecution has examined altogether six PWs who are PW-1, Subash Singh, PW-2, Om Prakash Singh, PW-3, victim herself, PW-4, Bindu Devi (informant), PW-5, Pratima Gupta and PW-6, Arjun Kumar Sharma, I.O.. Side by side, has also exhibited Ext-1, Signature of victim on statement under Section 164 CrPC, Ext-1/1, Signature of Bindu Devi on Fardbeyan. Ext-1/2, Signature of Bindu Devi on undertaking, Ext-2, Medical Report, Ext-3, Formal FIR, Ext-4, Signature on the FIR of Raj Rup Ram.

6. Defence has also examined one DW-1, Neeraj Kumar and has also exhibited Ext-A, signature of Neeraj over Panchnama, Ext-A/1, Signature of Subhas over Panchnama.

7. Three fold arguments have been raised on behalf of learned counsel for the appellant. The first one is that the



period of sentence has already been exhausted by remaining the appellant under judicial custody whereupon, this appeal would be dismissed as, any finding relating thereto, would not give substantial relief to the appellant. It has also been submitted that appellant is a retired military personnel and so, the finding so recorded against him will have an adverse impact in future, whereupon, the judgment impugned be set aside and, to justify such prayer, it has been submitted that there happens to be inordinate delay in institution of the case without any cogent explanation. Whatsoever explanation has been offered is not at all convincing because of the fact that the grand-father of the victim, who still commands the status of head of the family remained present during the alleged period who would have instituted the case without waiting for arrival of Om Prakash Singh (PW 2), father of the victim, furthermore, the undertaking allegedly having at the end of the appellant, speaks about cutting at relevant place with insertion, adverse to the interest of the appellant, and the same without having cogent reason, would not be considered a ground to explain the delay.

8. Apart from this, it has also been submitted that had there been fair play at the end of the prosecution, then in that event, Uddho Singh, grand-father of the victim and whose



presence is on the undertaking would have been examined at the end of the prosecution to say regarding the actual affair, even in the background of the presence of PW-4, informant over the same, did not justify her status to be fair. The cumulative effect did not justify the finding so concluded at the end of the learned lower court.

9. It has also been submitted that when the evidence of victim-PW-3 is properly scrutinized, it is evident that (a) the learned lower court failed to test her I.Q before permitting her examination, (b) she was examined in contravention of precautions so laid down under POCSO Act (c) is found inconsistent with her initial version so recorded under Section 164 CrPC and cumulative effect makes her evidence unacceptable, inadmissible. Thus, in any view of the matter, the judgment impugned would not survive and that being so, is fit to be set aside.

10. On the other hand, learned APP while supporting the finding recorded by the learned lower court has submitted that being indifferent, the P.O. has committed some mistakes during course of recording of evidence of PW-3, the victim, a minor. Knowing since before, that prosecution is being conducted under POCSO Act. Under POCSO Act, there



happens to be procedure prescribed for examination of the minor and, from the order-sheet as well as from deposition of the PW-3, it is evident that learned lower court had not taken precaution to that extent.

11. Be that as it may, the victim happens to be consistent whereupon the learned lower court has rightly held the appellant guilty for an offence committed within the purview of Section 9 of the Act punishable under Section 10 of the Act which needs no interference.

12. At the first step, the status of the witnesses has to be seen. It is evident that PW-1 has turned hostile. PW-2 is the father, PW-4 is the mother, PW-5 is the doctor and PW-6 is the I.O. while PW-3 is the victim herself. From the evidence of PW-2, PW-4, it is apparent that they both are not eyewitness to occurrence. PW-2 came from Assam where he was residing in order to earn livelihood for the family and then, he was duly acknowledged at the end of PW-4, his wife and then, the matter has been reported to the police.

13. PW-4 is the mother, who is also not an eyewitness to the occurrence. She has, during course of deposition, stated that while the victim was weeping, she interrogated and then, the victim disclosed that appellant, Raj



Kishore who happens to be her cousin grand-father allured her by different ways and then frequently, committed sin with her, as a result of which, she suffered pain in her genital whereupon, she was about to go to the police but, as the accused confessed his guilt and has given undertaking and further, the respectable persons of the village persuaded that the matter happens to be that of family, so it be resolved, whereupon, she informed her husband who came and then thereafter, the matter has been reported to the police. It is further evident from her cross-examination that she has been confronted with the land dispute having amongst the family which she denied and, the undertaking having at the end of the accused in the aforesaid background which, later on, has some cutting at relevant place with an insertion having been done with *mala fide* intention and then institution of the case, has also been blatantly controverted.

14. It is further visualizing from her evidence at para-22 that the victim was examined by the village doctor, but she was unable to disclose her name. However, the prescription might have been with the police. In para-10, she has stated that Udho Singh, her father-in-law happens to be head of the family. It has also been disclosed that sister of her mother-in-law is the wife of the accused. In para-11, she has stated that she came to



know about the occurrence in the month of July, 2013 but she is unable to disclose the exact date. In para-12, she has stated that the day on which, she came to know about the occurrence, the accused was present at the house. On that day itself, she has disclosed the occurrence to all the family members including her mother-in-law, father-in-law whereupon, her father-in-law had talked with the accused. Then at para-14, 15, 16 and 17, it happens to be simple a denial to the suggestion that Panchayati was on the eve of land dispute and not on the fact as enumerated by her.

15. While examining PW-5, doctor, it is evident that conducting prosecuting agency, that means to say, learned Additional P.P either had overlooked the medical report or the doctor during course of examination missed her non finding so recorded because of the fact that in the injury report, the doctor had opined that the victim was subjected to forceful introduction of stick or finger as she had found hymen old ruptured and the vagina was admitting tip of index finger which, during course of deposition, she failed to depose. However, injury report is Ext-2. Because of the fact that she had not deposed, therefore, relaxed the allegation, likewise status happens to be that of PW-2, husband of PW-4, who came after being informed by the PW-4.



He simply corroborated the allegation. Even during cross-examination, nothing has been adduced by the defence.

16. PW-6 is the I.O. who has deposed that after registration of the case, investigation was entrusted to him (Exhibited the relevant documents). Visited the place of occurrence which happens to be the house of the accused and then detailed the same, apprehended the accused, got the victim examined under Section 164 CrPC. She was medically examined. Recorded further statement of the informant, statement of the witnesses, statement of the victim, received supervision note, received medical report, received a copy of statement under Section 164 CrPC and then, after completing investigation, submitted charge-sheet. During cross-examination, he was cross-examined over the undertaking as its heading happens to be that of "Shapath Patra". He has further stated that he was not knowing who had ascribed the aforesaid document. He has further stated that he has not investigated on that very score. Then at para-14, has stated that he had not taken statement of any of the independent witness.

17. PW-3 is the victim. She has stated that the occurrence is of about two years ago. Accused, Raj Kishore (her cousin grand-father) used to call her into his room and then, lie



her down over his bed. He used to give her chocolates etc. He used to take out his genital and then directed her to catch hold of it and shake. Out of fear, she used to obey his dictum. He also used to threaten her not to disclose anybody, otherwise, she will be murdered. Such activity continued. Then, one day, she disclosed the event to her mother. Police had come, interrogated her, took her to court where her statement was recorded. Identified the accused. During cross-examination at para-2, she has stated that she had not deposed at the instance of anybody nor she has been tutored. In para-3, she has stated that Raj Kishore happens to be her younger grand-father. For the last two years, they are not on visiting terms. There happens to be no land dispute amongst the parties. Then had denied the suggestion that on account of land dispute, there was some sort of Panchayati. She had further stated that she was medically examined but she is unable to disclose the name of the doctor. At para-12, she has stated that she had disclosed with regard to offering sweets by the accused two years ago to her mother and in likewise manner, had also informed to her mother regarding the sin having been committed at the end of the accused. Then has denied the suggestion that no such kind of occurrence has been committed at the end of accused.



18. DW-1 is the son of the appellant who has come to depose that there happens to be land dispute amongst the family and on account thereof, there was Panchayati. Later on, after having cutting at some place, there has been insertion with *mala fide* intention. This evidence has got no relevance over original document is readable, and it does not justify the suggestion having at the end of defence.

19. It is evident that inter se relationship happens to be that of younger/cousin grand-father with an addition that the sister of the mother-in-law of the informant is also married with the accused/appellant. Even then, the accused/appellant could not restrained his amorous activity wherein, keeping away the relationship as well as ignoring the status of the victim, a kid aged about six years, allured her in order to satisfy his lust.

20. From the evidence of the victim, it is evident that whatever allegation has been levelled at her end, defence could not able to demolish the same, as failed to cross-examine in spite of the fact that there happens to be some deviation, which too has been left untested and consequent thereupon, the judgment impugned does not require interference. As such, this appeal sans merit and is, accordingly, dismissed.

21. As is evident, the appellant might have exhausted



the period of incarceration in lieu of sentence and so, no order is needed on that very score, otherwise will be released after saturation of the the period of sentence.

(Aditya Kumar Trivedi, J)

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