

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.500 of 2016**

Arising Out of PS. Case No.-96 Year-2011 Thana- MAHUA District- Vaishali

Ranjeet Kumar Paswan Son of Bindeswar Paswan Resident of Village
Madhaul, P.S Mahua, District Vaishali.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Ravi Ranjan, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT**

13-09-2019

Appellant, Ranjeet Kumar Paswan has been found guilty for an offence punishable under Section 376 IPC and sentenced to undergo RI for 10 years as well as to pay fine appertaining to Rs. 2500/- in default thereof, to undergo RI for one month vide judgment of conviction dated 04.06.2016 and order of sentence dated 08.06.2016 passed by 3rd Additional Sessions Judge, Vaishali, Hajipur in Sessions Trial No. 221/2012 arising out of Mahua PS Case No. 96/2011.

2. Subodh Paswan (PW-5), father of the victim girl (name withheld), gave his Fardbeyan on 16.03.2011 at about 1:00 PM at Mahua Hospital where the victim (PW 8) a kid, aged about three years was admitted for treatment as she was brutally ravished in an inhuman manner disclosing therein that while his daughter was playing near about Jagi Baba Asthan, his



neighbour, Ranjeet Kumar Paswan came, allured her and then, took her to a field by the side of Jogi Baba Asthan having a 'Kara' (a kind of thatch) where after lying her down committed sin. Out of pain and trauma, his daughter shouted whereupon, he being engaged at some distance, rushed and gone inside the 'Kara' where he has seen his daughter lying and was weeping. He has also seen blood oozing out from her genital and spread over from her waist to the legs. Her frock and panty were soaked with blood. Seeing him, Ranjeet began to flee whereupon, they have apprehended him.

3. After registration of Mahua PS Case No. 96/2011, investigation commenced and completed 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. However, nothing has been adduced in defence.

5. In order to substantiate its case, the prosecution has examined altogether eight PWs who are PW-1, Ram Kishore Rai, PW-2, Sanoj Paswan, PW-3, Rajgir Paswan, PW-4, Anita Devi, PW-5, Subodh Paswan, PW-6, Dr. Sarita Shankar, PW-7,



Upendra Kumar and PW-8, Victim. Side by side, has also exhibited Ext-1, Signature of informant, Ext-1/1, Fardbeyan, Ext-2, Medical Report, Ext-3, Application filed by the I.O for keeping the original seizure list on record. As stated above, nothing has been adduced in defence.

6. Manifold arguments have been raised on behalf of the appellant while assailing the judgment of conviction and sentence. First of all, the status of the witnesses have been challenged. It has been urged at the end of the learned counsel for the appellant that none is the eyewitness to the occurrence and that happens to be the reason behind presence of infirmity, inconsistency amongst the PWs and that made their evidence vulnerable, unreliable and unacceptable as they, during course of trial tried to become any eye witness. Hence be rejected. It has also been urged that two brothers i.e. PW-2 and the informant PW-5 independently, claimed to have arrived at the place of occurrence first. In likewise manner, there happens to be claim at the end of PW-2 that first of all, his statement was recorded at the hospital, so that statement would have been the basis of prosecution. That statement has not been brought up on record whereupon, it could be said that the prosecution has concealed the initial version leading to complete rejection of the



case of the prosecution. In the same breath, it has been submitted that from the evidence of PW-5, it is evident that although, he had given Fardbeyan at the hospital but, controverted the same by saying that his first statement was recorded at the place of occurrence itself. So submitted that when the evidences of each and every witness are taken separately or conjointly, did not justify their status and that being so, their evidences are fit for outright rejection. They have simply apprehended the appellant on mere misrepresentation that too, in the background of some sort of prevailing grudge.

7. It has also been argued that not even a single independent witness has been examined. Had there been such kind of occurrence, then in that event, presence of independent witness would have been there. It has also been submitted that from the evidence of the I.O., it is evident that place of occurrence has not been affixed as, the witnesses have categorically stated that though blood had oozen out and spread over earth but, neither the I.O. has mentioned the fact that he had seen the blood at the place of occurrence nor it was seized. That being so, the 'Kara' field could not be accepted as a place of occurrence. Over apprehension of the appellant at that place, as, I.O. had failed to divulge the same.



8. Then it has been urged that there happens to be consistent evidence on the record that appellant was apprehended on chase near about the place of occurrence. Had there been truthfulness in the evidence of the witnesses and further, having profuse bleeding from genital of the victim, then in that event, there would have been blood stain over the apparel of the appellant and so, had there been proper investigation at the end of the I.O., not only the blood stained cloth would have been seized at his end rather the appellant would have also been produced before the doctor as required under Section 53A of the CrPC. Non production of the appellant before the doctor is a circumstance which nullifies the allegation and in likewise manner, non seizure of the pant and underwear happens to be a serious lacunae in the prosecution version.

9. Thus, in any view of the matter, the judgment impugned would not survive. As such, the same be set aside.

10. On the other hand, learned APP while supporting the finding recorded by the learned lower court, has submitted that the trial is not dependent upon the negligence, laches, incompetency of the I.O. In order to justify the same, it has been submitted that the victim's panty and frock were taken out by the doctor and were handed over to the I.O. for that, seizure list



was prepared but the I.O. had not sent the aforesaid seizure list along with Fardbeyan and, in order to have some sort of excuse, filed a petition before the learned CJM (Ext-3) that he be allowed to furnish the original seizure list which he omitted to tag with Fardbeyan.

11. It has also been submitted that it is needless to say that a kid aged about three years had fallen prey at the hands of the accused who could not resist, moreover, when the accused was known since before, having house adjacent to the house of the victim and was related therewith. There happens to be no reason to falsely implicate as, nothing substantial has been brought up at the end of the appellant. In the aforesaid background, it has also been submitted that the accused has not challenged his apprehension that too, at place of occurrence. Had there been, then in that event, there would have been some sort of version or plausibility with regard to false implication of the appellant. Apart from this, the evidence of PW-5 in consonance with other witnesses, it is apparent that save and except minor discrepancy which was but natural on account of efflux of time, they are firm over the activity of the appellant and further apprehension of the accused, on chase, that too, within close proximity. Consequent thereupon, the finding so



rendered by the learned lower court is fit to be affirmed.

12. So far status of the witnesses are concerned, PW-1 is an independent witness, PW-2 is own uncle of the victim, PW-3 is cousin uncle of the victim, PW-4 is mother of the victim, PW-5 is the informant/father of the victim. PW-6 is doctor and PW-7 is the IO and PW-8 is the victim herself.

13. PW-6, the doctor had examined the victim on 16.03.2011 itself and found the following:-

1. Blood stain on the inner side of both the legs brown in colour. Petient was weeping.

P/U exam- Blood stained discharge in vagina, swab sent for path exam.

Fourchette was torn bleeding ++ PLV examination was tender. Torn Fourchette was subtused by caragut no. 1 under I.V. Anesthesia by Dr. Ranjeet.

Report of Pathologist- No spermatozoa R.B.C or foreign body present.

Report of Dentist- Age is about between 5 to 6 yrs.

Final Opinion- Age is between 3 to 6 years.

14. From the cross-examination, it is evident that nothing adverse to the prosecution has been elicited from her mouth rather from para-4, it is evident that genital of the victim was stitched and that happens to be an additional factor to substantiate the allegation that too with regard to penetration.

15. Now coming to ocular evidence, it is manifest



that there happens to be three kinds of evidences having been adduced at the end of prosecution. The first one is that of victim, PW-8 who, at the time of occurrence was a kid aged about three years. How her evidence is to be considered is a circumstance, more particularly, her evidence has been recorded on 02.03.2016 while the date of occurrence happens to be 16.03.2011 that means to say, approximately after five years. In ***Shamim v. State (Government of NCT of Delhi)*** reported in (2018) 10 SCC 509 , it has been held as follows:-

“14. In ***State of U.P. v. Krishna Master and Ors.***, (2010) 12 SCC 324, disagreeing with the High Court which had doubted the credibility of a child witness, it was observed:

36. ... This Court fails to understand as to on what principle and on which experience in real life, the High Court made a sweeping observation that it is inconceivable that a child of Madan Lal's understanding would be able to recapitulate facts in his memory witnessed by him long ago. There is no principle of law known to this Court that it is inconceivable that a child of tender age would not be able to recapitulate facts in his memory witnessed by him long ago. This witness has claimed on oath before the Court that he had seen five members of his family being ruthlessly killed by the Respondents by firing gunshots. When a child of tender age witnesses gruesome murder of his father, mother, brothers, etc. he is not likely to forget the incident for his whole life and would certainly recapitulate facts in his memory when asked about the same at any point of time, notwithstanding the gap of about ten years between the incident and recording of his evidence.

37. This Court is of the firm opinion that it would be doing injustice to a child witness possessing a sharp memory to say that it is inconceivable for him



to recapitulate facts in his memory witnessed by him long ago. A child of tender age is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child would be able to recapitulate correctly and exactly when asked about the same in future. Therefore, the specious ground on which the reliable testimony of PW 2 Madan Lal came to be disbelieved can hardly be affirmed by this Court.

16. So, in light of principle enunciated by the Hon'ble Apex Court as referred hereinabove, the evidence of the victim is to be scrutinized in order to properly appreciate whether she could be a reliable witnesses. The second kind of witness happens to be of those persons who claimed to have apprehended the accused/appellant at the spot when they arrived after hearing shout of the victim, PW-8. As stated above the plea as raised, at the end of the learned counsel for the appellant, that on account of inconsistency, their evidence could not be considered, could be seen in the background of principle as laid down by the Hon'ble Apex Court in the case of ***Khushwinder Singh v. State of Punjab*** as reported in ***2019(2) BLJ 340 SC*** wherein it has been held as follows:-

“10. As held by this Court in a catena of decisions, minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. In the case of *Yogesh Singh v. Mahabeer Singh* (2007) 11 SCC 195 it is observed by this Court



that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of prosecution case and should not be taken to be a ground to reject the prosecution evidence. It is further observed that the omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is further observed that it is only the serious contradictions and omissions which materially affect the case of prosecution but not every contradiction or omission.

17. The third kind of witness happens to be, who have seen the victim after having been taken out from 'Kara' field (place of occurrence). There also happens to be perception of defective investigation and on that very score in the case of ***Gajoo v. State of Uttarakhand*** as reported in (2012) 9 SCC 532, it has been held as follows:-

“19.A defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused, should not be an aspect of material consideration by the court. PW5 has duly proved the recovery of Daranti, Ext. 2 and the blood stained pyjama, Ext. Ka 5 and has duly stood the test of cross-examination in court. Both these articles were recovered by the investigating officer Brahma Singh, PW6 and the recoveries have been duly established before the court. The recoveries having been proved and the case of the prosecution being duly supported by two eye-witnesses, PW2 and PW3 and two witnesses, PW4 and PW5 who were present immediately after the occurrence, have



proved the case of the prosecution beyond any reasonable doubt.

In regard to the defective investigation, this Court in the case of Dayal Singh and Ors. v. State of Uttaranchal : 2012 (7) Scale 165 while dealing with the cases of omissions and commissions by the investigating officer, and duty of the Court in such cases held as under:

22. Now, we may advert to the duty of the Court in such cases. In the case of Sathi Prasad v. The State of U.P. : (1972) 3 SCC 613, this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the Court to see if the evidence given in Court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in the case of Dhanaj Singh @ Shera and Ors. v. State of Punjab : (2004) 3 SCC 654, held, "in the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.

23. Dealing with the cases of omission and commission, the Court in the case of Paras Yadav v. State of Bihar : AIR 1999 SC 644, enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the



designed mischief would be perpetuated and justice would be denied to the complainant party. In the case of Zahira Habibullah Sheikh and Anr. v. State of Gujarat and Ors. : (2006) 3 SCC 374, the Court noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the quality of trial process can be observed from the words of Bentham, who states that witnesses are the eyes and ears of justice. The Court issued a caution that in such situations, there is a greater responsibility of the court on the one hand and on the other the courts must seriously deal with persons who are involved in creating designed investigation. The Court held that legislative measures to emphasize prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in proper administration of justice must be given as much importance if not more, as the interest of the individual accused. The courts have a vital role to play.

(Emphasis supplied)

24. With the passage of time, the law also developed and the dictum of the Court emphasized that in a criminal case, the fate of proceedings cannot always be left entirely in the hands of the parties. Crime is a public wrong, in breach and violation of public rights and duties, which affects the community as a whole and is



harmful to the society in general.

25. Reiterating the above principle, this Court in the case of National Human Rights Commission v. State of Gujarat (2009) 6 SCC 767, held as under:

The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata. The courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice-- often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.

26. In the case of State of Karnataka v. K. Yarappa Reddy 2000 SCC (Crl.) 61, this Court occasioned to consider the similar question of defective investigation



as to whether any manipulation in the station house diary by the Investigating Officer could be put against the prosecution case. This Court, in Paragraph 19, held as follows:

19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the Investigating Officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the Court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by the investigation officers. Criminal Justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.

27. In *Ram Bali v. State of Uttar Pradesh* : (2004) 10 SCC 598, the judgment in *Karnel Singh v. State of M.P.* : (1995) 5 SCC 518 was reiterated and this Court had observed that 'in case of defective investigation the court has to be circumspect while evaluating the evidence. But it would not be right in acquitting an



accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective'.

28. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The Courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the Court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not sub-served. For truly attaining this object of a 'fair trial', the Court should leave no stone unturned to do justice and protect the interest of the society as well.

29. This brings us to an ancillary issue as to how the Court would appreciate the evidence in such cases. The possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But it is not that every minor variation or inconsistency would tilt the balance of justice in favour the accused. of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. The Courts, normally, look at expert evidence with a greater sense of



acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. In *Kamaljit Singh v. State of Punjab* : 2004 Cri.LJ 28, the Court, while dealing with discrepancies between ocular and medical evidence, held, "It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out."

30. Where the eye witness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by examining the terms of science, so that the court, although not an expert, may form its own judgment on those materials after giving due regard to the expert's opinion, because once the expert opinion is accepted, it is not the opinion of the medical officer but that of the Court. {Plz. See *Madan Gopal Kakad v. Naval Dubey and Anr.* : (1992) 2 SCR 921: (1992) 3 SCC 204}.

18. In a criminal proceeding there happens to be obligation upon the judge and there should always be thirst for search of the truth as has been observed by the Hon'ble Apex



Court in the case of *Shamim (supra)* and for better appreciation, relevant paragraph is quoted below:-

15. Each criminal trial is but a quest for search of the truth. The duty of a judge presiding over a criminal trial is not merely to see that no innocent person is punished, but also to see that a guilty person does not escape. One is as important as the other. Both are public duties which the Judge has to perform. The trial court had erred and misappreciated the evidence to arrive at an erroneous conclusion.

19. PW-8, the victim during course of her evidence has stated that the occurrence is of about five years ago. It was mid-day. She was playing near Yogi Baba. Ranjeet took her to 'Kara'. Thereafter, undressing her, he committed sin with her. There was profuse bleeding from her genital causing blood stain over her panty and frock. She perceived severe pain. She raised cry whereupon, her father came. Ranjeet escaped. Identified the accused. She was medically treated. During cross-examination, she has stated that for the first time, she is deposing with regard to the occurrence in the court. Police had come after the occurrence. She had disclosed with regard to occurrence to her parents after two-three days. At that very time, so many villagers were there. Ranjeet is a farmer. There are five days in a week. Her father has brought her to depose. He has instructed her what to speak. On court's question, she has disclosed that as



per instruction of her father, she has deposed.

20. PW-2 has stated that the occurrence is of about 1 year and 6 months ago. It was 12:00 Noon. His statement was recorded by the police. At that very moment, he was sitting near Yogi Baba. At that very time, he heard cry of a child. After hearing the same, he proceeded in that direction and then, he saw the victim unconscious in pool of blood lying there. He saw Ranjeet having his pant unbuttoned. Finger of his both hands were smeared with blood. This occurrence has taken place in a 'Kara' field. He after seeing the condition of the victim, shouted attracting Rajgir Paswan, Subodh Paswan including so many persons. They have lifted the victim and taken to hospital as, she was raped. Ranjeet was apprehended at the spot itself. Identified the accused. During cross-examination, he has stated that his statement was recorded at the hospital on the same day. At that very moment, statement of no other person was taken. At that very moment, the mother of the victim, Subodh, Chowkidar were present. It has also been disclosed that Jaisiyaram Paswan, one of the Chowkidars happens to be his nephew. In para-5, there happens to be contradiction but, the same has got no relevancy in the background of the fact that attention of the I.O. PW-7 has not been drawn on that very score. In para-6, he has



stated that he is unable to disclose the boundary of the place where the victim was playing. He is also unable to disclose the boundary of the place where occurrence took place. At para-7, he has stated that first of all, he reached at the place of occurrence. He has further stated that he has seen the victim at the northern flank of the 'Kara' field. In para-8, he has stated that his niece was unconscious. Within 5-7 minutes, she was taken to hospital. Accused was not taken to hospital. In para-9, he has stated that 'Kara' field belongs to Bindeshwar Paswan. He is unable to disclose the length and breadth of 'Kara' field. He has further stated that I.O. had visited the place of occurrence and found blood in a dimension of 1 ½ hands area. In para-10, he has stated that accused happens to be his nephew. His house is adjacent to his house. Accused is a bachelor. At the time of occurrence, he was aged about 27-28 years. Then he denied the suggestion that it is not a fact that at the alleged time of occurrence, he was not at the place of occurrence nor had he taken away the victim to the P.O. It is not a fact that accused had not committed rape on the victim.

21. PW-3 has deposed that on the alleged date and time of occurrence, he was at his house. After hearing hue and cry, he rushed towards the P.O. which happens to be 'Kara'



field. When he reached there, he saw the villages having apprehended the accused on the pretext that he has committed rape on the victim/daughter of Subodh Paswan aged about 3-4 years. He has seen the victim in a pool of blood. There was bleeding from her genital. Thereafter, police was informed and, the villagers handed over custody of Ranjeet to the police. Victim was taken to hospital. Identified the accused. During cross-examination at para-3, he has stated that he happens to be Ex-Sarpanch of Manjhaul Panchayat. His house lies at a distance of 15 Rassi from the place of occurrence intervened by field of so many persons. In para-4, he has stated that his statement was recorded by the police a day after the occurrence. at the P.O. At para-5, 6, his attention has been drawn up towards his previous statement but, gone worthless on account of non drawing of attention of the I.O., PW-7. In para-7, he has stated that after hearing '*hulla*', he reached at the P.O.. When he reached at the P.O., there were 200 to 300 persons present but he is unable to disclose the names of all of them. In para-8, he has stated that he is unable to properly identify the presence who disclosed about the occurrence because of the fact that there was utterance by large number of persons with regard to the rape committed by the accused over the victim. In para-9, he has



stated that he had not inquired from Ranjeet as, after reaching, he got engaged in caring the victim. In para-10, he has stated that at that very time, Ranjeet had worn full-pant of blue colour and vest of green colour. He had seen blood over the earth at the place of occurrence. He had not cared to see whether blood was over the apparel of Ranjeet or not. At that very time, the victim was unconscious. He had not talked with her at that very time. He had not gone to the hospital with the victim. Then has denied the suggestion that being the brother of Subodh, he has deposed falsely.

22. PW-5 is the informant. He has deposed that on the alleged date and time of the occurrence, Ranjeet after alluring the victim, his daughter took her to 'Kara' field while she was playing near Yogi Baba. When she shouted "Papa", then he rushed and, after arriving there, had seen Ranjeet committing rape. When Ranjeet tried to flee, Subodh, Rajgir, Rajkishore and he himself caught hold of him on chase and then, he was handed over to the Chaukidar. His daughter was in pool of blood. Her panty and frock were soaked with blood. He rushed to hospital carrying his daughter where she was treated for days together. Police had come at the hospital and recorded his Fardbeyan. Police had also recorded his statement at 'Kara' field itself.



Exhibited his signature. Identified the accused. During cross-examination at para-4, he has stated that first of all, his statement was recorded in the 'Kara' field. Police had taken his statement twice. In para-5, he has stated that police has also recorded his statement at his house. In para-6, there happens to be contradiction but, again that has gone worthless as the attention of the I.O., PW-7, has not been drawn. In para-7, he has stated that at the time while his daughter had shouted, he was returning after doing menial work. He was returning through the lane lying by the side of the P.O.. he was engaged under Saburi Mian. He had gone there at 10.30 AM. He was doing work at a distance of 1 Kilometre. In para-8, he has stated that after hearing cry of his daughter, he rushed towards place of occurrence. Gone inside the 'Kara' field. In para-9, he has stated that he had seen his daughter unconscious. Rajkishore, Sanoj , Rajgir and others were present. First of all, he has seen Ranjeet who was engaged in committing rape upon his daughter. He with the help of others, chased and apprehended the accused. They had chased about two Laggi. He ran towards east. In para-10, he has stated that accused was not assaulted. He was immediately, handed over to the Chaukidar. In para-11, he denied the suggestion that the leg of accused had sustained



fracture at an earlier occasion. Steel plate was affixed. He has further stated that after handing over the accused to Chaukidar, they have rushed to hospital along with the victim, who was unconscious. She regained sense after 4-5 days. The court has recorded demeanor of the witness as illiterate and rustic. In para-12, he has stated that after regaining sense, his daughter had spoken. What would be expected from a girl aged about three years to say about the occurrence. 'Kara' field belongs to Bindeshwar Paswan. Then localized place of occurrence. In para-12, he has stated that blood was at 2-3 places which was shown to the police. He is not aware with the fact whether the accused was medically examined or not? In para-13, he has stated that cloth of the victim was handed over to the police. In para-15, he has stated that none has house near the place of occurrence. In para-16, he has stated that the house of the accused is adjacent to his house. Accused is not mad. He happens to be his brother. His father is a petty contractor. He does not work under him. Then has denied the suggestion that the accused has been falsely implicated. He had not committed rape upon the victim.

23. PW-1 and PW-4, mother of the victim are the persons who arrived at the place of occurrence much after, on



being informed and had seen the accused being apprehended as well as, the victim being unconscious having bleeding from her genital. They came to know about the occurrence as was being discussed at the P.O., going to hospital along with victim. During cross-examination, nothing substantial is there.

24. PW-7 is the I.O. He has stated that on 16.03.2011, he was S.I. at Mahual Police Station. On being entrusted, he took up investigation. He recorded further statement of the informant. He prepared seizure list. He recorded statement of mother of the victim and then, visited the place of occurrence. During course of inspection of the place of occurrence, he had found 'Kara' (phoos) trampled. Then had shown the boundary as North-Canal, South-Laxmi Singh, East-Canal and then road, West-Baldeo Paswan. Then thereafter, he recorded the statement of the other witness. Took custody of the accused and brought him to the police station. Sent the victim to Hajipur for treatment. Received injury report, supervision note and then, after completing investigation, he had submitted charge-sheet. Then has exhibited the relevant documents. He has also exhibited the petition through which a prayer has been made before the learned lower court to admit the original seizure list which he left to transmit along with FIR showing



seizure of panty & frock of the victim. During cross-examination at para-5, has stated that he had not seized any article from the place of occurrence. He has further stated that he had not got Ranjeet medically examined. He has not mentioned the fact in the case diary where he had arrested Ranjeet but, he was arrested on the date of occurrence itself. He is not remembering the clothes having worn by Ranjeet. He had not sent those clothes for chemical examination. In para-6, he has stated that he had not sent the clothes which was seized by him belonging to the victim to the FSL examination. He has not examined the persons whose field lies in the vicinity. In para-7, he has stated that he had not got the victim examined under Section 164 CrPC.

25. The evidence as a whole is to be considered during course of appreciation of the evidence as enunciated by the Hon'ble Apex court. When the evidences have been properly scrutinized in such a manner, it is apparent that presence of witnesses, namely, PWs-2, 3 and 5 is found duly recognized at the place of occurrence ('Kara' field) irrespective of who came first where the victim, a kid aged about 3 years was found unconscious being in pool of blood and, there was bleeding from her genital. It is also apparent that appellant was



apprehended at the same place on being chased covering only 10 steps and, on that very score, there happens to be no denial at the end of the appellant.

26. It is further evident that his both hands, at the time of apprehension, were smeared with blood. There happens to be failure at the part of the Investigating Officer at two counts, the first one, he had not seized anything from the place of occurrence, nor irrespective of seizure list with regard to production-cum-seizure of the panty and frock of the victim soaked with blood was transmitted to the court along with Fardbeyan, coupled with non transmission of the same for chemical examination and, the second event, having failed to get the appellant/accused examined by the doctor in accordance with Section 53A of the CrPC as well as non-seizure/transmission to FSL the apparel of the accused/appellant, could be seen adverse to the prosecution. It is not that the aforesaid event has been intentional in order to give benefit to the prosecution rather, it happens to be, from the conduct of PW-7, the IO, on account of his ignorance or incompetence. Moreover, the appellant has not pleaded that he was an impotent nor he controverted that he was not apprehended by the prosecution party at 'Kara' field where the



victim was lying unconscious in the pool of blood and, even at that very time, she was bleeding having no animosity since before. Absence of spermatozoa does not rule out the factum of rape as, the requirement is simply penetration to any extent and not ejaculation. Furthermore, irrespective of the fact that appellant could not be able to suggest prejudice having suffered by him on that very pretext, it is settled at rest that for the fault of I.O., prosecution could not be allowed to suffer unless and until, the lapses happen to be intentional one in order to give additional support to prosecution.

27. That being so, the instant appeal is found bereft of merit, whereupon, the same is dismissed. Appellant is under custody which he shall remain till the saturation of the period of sentence.

(Aditya Kumar Trivedi, J)

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