

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.782 of 2012

Arising Out of PS. Case No.-227 Year-2010 Thana- SAUR BAZAR District- Saharsa

Nitish Kumar @ Nitish Yadav, Son of Kusheshwar Yadav, resident of Village
- Routa Banshi, P.S. - Sour Bazar, District – Saharsa. Appellant.

Versus

The State of Bihar. Respondent.

Appearance :

For the Appellant/s : Mr. Awadhesh Kumar Singh, Advocate.

For the Respondent/s : Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date : 11-02-2019

Heard Mr. Awadhesh Kumar Singh, learned counsel
for the appellant and Mr. Ajay Mishra learned APP for the State
on this Criminal Appeal.

2. This appeal has been preferred against the
judgment and order of conviction dated 11.06.2012 and order
of sentence dated 18.06.2012 passed by learned 1st Additional
Sessions Judge, Saharsa in Sessions Trial No.136 of 2011,
arising out of Sour Bazar P.S. Case No. 227 of 2010, whereby
the learned Trial Court convicted the accused Nitish Kumar @
Nitish Yadav for the offence punishable under Sections 376
(2) (f) of the Indian Penal Code (hereinafter in short referred
to as the 'IPC') and sentenced him to undergo life
imprisonment (R.I.) and also slapped him with a fine of Rs.



10,000/- and in case of default of payment of fine to further undergo S.I. for six months under Section 376 (2) (f) IPC.

3. The factual matrix of the case is that Sour Bazar P.S. Case No. 227 of 2010 was instituted under Section 376 (f) of the IPC against Nitish Yadav on the basis of statement of Lalita Devi, wife of Deepak Yadav recorded on 14.09.2010 by S.I. Md. Nazimuddin of Sour Bazar Police Station with the allegation in succinct that on 03.09.2010 at around 12 PM in night the informant along with her mother Indira Devi, husband Deepak Yadav and daughter (victim) had gone to see the fair of Sri Krishna Janamastmi at Routa Mahanth Asthan. As in course of fair her daughter aged about 10 years started napping, she made her to sleep under the shade (Marwa) of Mahanth Asthan. After sometime when she woke up and did not find them, she proceeded towards house. On the way, Nitish Yadav met and took her in the orchard and forcibly committed rape against her. When she started making search of her daughter someone told her that her daughter had gone along with Nitish Yadav and when she proceeded towards orchard she witnessed her daughter coming from the side of orchard followed by NitishYadav. Her daughter told that Nitish uncle has committed rape against her. Listening the



same Nitish Kumar made his good escape from there. On witnessing her person she noticed her gentile organ bleeding. Then she took her daughter to her house. There was panchayati in the village regarding the matter but in vain. Nitish Yadav had been extending threatening to them since the occurrence.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against accused Nitish Kumar @ Nitish Yadav under Section 376 of IPC.

5. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions and after commitment and on transfer finally the case came in *seisin* of the learned 1st Additional Sessions Judge, Saharsa for trial.

6. Charge against accused Nitish Kumar @ Nitish Yadav was framed under Sections 376 (f) IPC. Charge was read over and explained to him by the Court to which he pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether seven prosecution



witnesses, namely, Bishundeo Yadav, who happens to be maternal uncle of the victim, as P.W.1, informant Lalita Devi as P.W.2, victim as P.W.3, Dr. Karuna Kumari, who had examined the victim, as P.W.4, husband of the informant, Deepak Yadav as P.W.5, Shatrughan Yadav, who happens to be father of the informant, as P.W.6, I.O. of the case Nazimuddin as P.W.7. The prosecution has also filed and proved some documents by way of documentary evidence in the case.

8. The statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming to have been falsely implicated in the case due to animosity. The accused person has neither adduced any ocular nor documentary evidence in buttress of his case.

9. After hearing the parties and perusing the record, the learned Trial Court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict has preferred the present criminal appeal.

11. The point for consideration in this case is, as



to whether the prosecution has been able to bring home the charge levelled against the appellant beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellant that there is no eye-witness of the occurrence of committing rape by the appellant against the victim. None has seen the victim taking by the appellant from the place of her sleeping. It is further submitted that as per the account of the witnesses the victim was first treated by Dr. Pawan Kumar, who had also administered sline to her but the said doctor has not been examined by the prosecution. It is further submitted that as a matter of fact the victim had sustained injury by accidentally falling on the peg. It is also submitted that there is delay of ten days in filing the F.I.R. which creates serious doubt about the prosecution case. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellant by adducing convincing, trustworthy and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellant by the learned Trial Court is liable to be set aside and the appellant is entitled to be acquitted.

13. Per contra, learned APP advocating the



correctness and validity of the impugned judgment and order of conviction and sentence submitted that the informant has supported the prosecution case in toto. Victim has also candidly stated about the commission of rape against her by the appellant by taking her in the orchard. The witnesses examined by the prosecution have also found the blood oozing from the genital organ of the victim and falling on her attire. The doctor who had examined the victim has also found mark of scratch on her neck, face and behind the ear and also injury on her genital organ and her genital organ bleeding. Thus, the ocular evidence also stands corroborated by the medical evidence and the learned Trial Court correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

14. From perusal of the testimony of the victim (P.W.3), it appears that in her examination-in-chief she has candidly stated that after awakening from slumber when she did not found her parents, she made search of them. Then she proceeded towards her house. On the way Nitish met her. He took her towards forest holding her and committed rape



against her. During the said occurrence, she felt severe pain and started bleeding. She has described the entire occurrence of committing rape by the appellant in detail in her examination-in-chief.

15. Though informant Lalita Devi (P.W.2) is not the eye witness of the occurrence of committing rape against the victim by the appellant but she has stated in para-4 of her examination-in-chief that when they proceeded towards her house in course of search of the daughter she witnessed her daughter and accused Nitish coming from the side of orchard. Her daughter divulged her about committing rape against her by Nitish. She was weeping at that time. As soon as her daughter divulged her aforesaid occurrence, accused made good his escape from there. Victim (P.W.3) in para-2 of her examination-in-chief has also corroborated the factum of divulgence of the aforesaid occurrence of committing rape against her by the appellant to her mother (P.W.2). Victim has also stated in para-2 of her examination-in-chief that after occurrence of committing rape against her by the appellant when she started proceeding from the forest Nitish also followed her. On the way her mother and others met her then Nitish fled away seeing them. Corroborating aforesaid



statements of the informant and victim P.W.6 in para-1 of his examination-in-chief has stated that during course of search of victim, he spotted the victim and Nitish coming from the side of bush. Seeing them Nitish made good his escape.

16. Bishundeo Yadav (P.W.1) has stated in para-1 of his examination-in-chief that he witnessed the blood fallen on the attire of the victim from her genital organ and she was restless due to pain. Informant Lalita Devi (P.W.2) in para-1 of her examination-in-chief has stated that genital organ of victim was bleeding. In para-2 of her examination-in-chief she has further stated that the blood was oozing from the attire of the girl. Victim in para-12 of her cross-examination has stated that her jeans and top were stained with blood. Deepak Yadav (P.W.5), who happens to be husband of the informant, in para-3 of his examination-in-chief has stated that there was swelling on the face of girl and mark of scratch on her neck, face and her attire was stained with blood. In para-13 of his cross-examination he has further stated that the bloodstained attire of the victim was taken before the doctor and the I.O. but the police did not seize her attire. Shatrughan Yadav (P.W.6) has stated in para-2 of his examination-in-chief that the blood was oozing from the 'Pajama' (trouser) of the girl



and her face was swollen. In para-11 of his cross-examination he has further stated that the bloodstained attire of victim was displayed to the I.O. at the police station. Though as per account of I.O. (P.W.7) as given in para-8 of his examination-in-chief he had not seized the attire of victim but, in our considered opinion, well established prosecution case is not to collapse merely due to latches of I.O. Thus, from perusal of aforesaid ocular evidence of prosecution, we find that the prosecution has substantiated the occurrence of committing rape against the victim by appellant at the time of occurrence taking her in the orchard by aforesaid ocular evidence.

17. From perusal of the medical examination report, marked as Ext.2, of the victim and the testimony of the Dr. Karuna Kumari (P.W.4), who had examined the victim, it appears that doctor has found injury on the person and private part of the victim and slight bleeding from genital organ and her hymen torn by observing that vulva swollen and oedematous. Vaginal orifice reddish and oedematous. Hymen not intact. Possibility of making sexual relationship with the victim is present because (1) hymen not intact like a virgin girl. (2) Vaginal orifice reddish and oedematous. (3) Vulva swollen & oedematous. (4) slight bleeding from vaginal



orifice present. Hence, confirmatory evidence of rape with the victim is present. Thus, from perusal of the medical evidence, it appears that the aforesaid ocular evidence of the prosecution stands corroborated by the medical evidence. Though from perusal of the testimony of the witnesses, it appears that the appellant has taken the defence of sustaining injury by the victim on her genital organ by falling on the peg by giving suggestion to the witnesses but the doctor (P.W.4) has ruled out sustaining such type of injury by falling on hard pointed object.

18. From perusal of the record, it appears that the occurrence is of 04.09.2010 at around 4 AM and regarding the said occurrence a complaint petition was filed by the victim on 06.09.2010 before the Chief Judicial Magistrate, Saharsa narrating, *inter alia*, that she had visited on 04.09.2010 and 05.09.2010 with her mother and maternal grandfather to the P.S. and divulged the occurrence to the police but the police did not lodge the case and made them leave the police station scolding them. Later on, the police recorded the statement of the victim on 14.09.2010 and lodged the case only on sending the victim for the medical examination by the C.J.M., Saharsa. Informant Lalita Devi (P.W.2) in para-27 of her cross-



examination has stated that she had rushed to the police station but the case was not lodged by the police then she took shelter of the Court. Deepak Yadav (P.W.5), who happens to be father of the victim, has stated in para-10 of his cross-examination that on the following day of the occurrence they rushed to the police station and gave statement there but the police did not take any action. Then on the said date he arrived at the Court and lodged the case. From the aforesaid evidence of the witnesses and in view of aforesaid aspect of the case, it appears that the prosecution has satisfactorily explained the delay in lodging the F.I.R.

19. In the facts and circumstances of the case, we find that the prosecution has successfully substantiated his case of committing rape against the victim by the appellant by adducing convincing, trustworthy and reliable ocular as well as medical evidence beyond all reasonable doubt. Hence, the impugned judgment and order of conviction and sentence passed against the appellant by the learned Trial Court does not require any interference by this Court and it is upheld. Accordingly, this appeal is dismissed.

20. Before parting, we may like to note that from perusal of the record and the discussions made by us herein



above, we find that there has been utter negligence on the part of the concerned Police Officer in lodging the F.I.R. despite approaching him by the informant and the victim at the police station. However, the police came in to action only on medical examination of the victim by the order of the Court of C.J.M., Saharsa and recorded the statement of the victim on 14.09.2010 i.e. after delay of ten days and lodged the case to save its skin, which, in our considered opinion, requires deep enquiry against the concerned Police Officer by the competent authority. Let a copy of this judgment be sent to the Home Secretary, Government of Bihar, Patna for needful.

(Rakesh Kumar, J.)

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
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