

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2459 of 2017**

Arising Out of PS. Case No.-118 Year-2015 Thana- NAUTAN District- West Champaran

Sharma Sahani Son of Chhotelal Sahani, resident of Village- Telhua, Police Station- Nautan, District- West Champaran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

WITH

CRIMINAL APPEAL (SJ) No. 1850 of 2017

Arising Out of PS. Case No.-118 Year-2015 Thana- NAUTAN District- West Champaran

1. Madan Sahani Son of Mangaru Sahani,
2. Munna Sahani Son of Palatu Sahani,
3. Jagdish Sahani Son of Chhotelal Sahani,
4. Nitish Sahani @ Niteesh Sahani Son of Madan Sahani,
All are Residents of Village- Telhua, Police Station- Nautan, District- West Champaran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 2459 of 2017)

For the Appellant/s : Mr. Bashishtha Narayan Mishra, Advocate

For the Respondent/s : Mr. Z. Hoda, APP

For the Informant : Mr. Sachida Nand Rai, Advocate

(In CRIMINAL APPEAL (SJ) No. 1850 of 2017)

For the Appellant/s : Mr. Bashishtha Narayan Mishra, Advocate

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

For the Informant : Mr. Sachida Nand Rai, Advocate

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT**

Date : 08-04-2021



The above referred appeals are against the common judgment of conviction dated 09.06.2017 and order of sentence dated 14.06.2017 passed by learned Additional Sessions-I-cum-Special Judge under POCSO Act, Bettiah, in connection with Nautan P.S. Case No.118 of 2015, corresponding to SGR No.39 of 2015 and CIS No.14306 of 2015. The learned trial Judge found all the appellants of Cr. Appeal (SJ) No. 1850 of 2017 guilty for offence under Section 17 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the POCSO Act) and ordered to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 25,000/- (Twenty five thousand) each. In default of payment of fine further three months imprisonment was ordered.

The sole appellant Sharma Sahani of Cr. Appeal (SJ) No. 2459 of 2017 was found guilty for offences under Sections 4, 6 and 8 of the POCSO Act and has been sentenced to undergo rigorous imprisonment for ten years and to pay a fine of rupees twenty five thousand for each of the offences under Sections 4 and 6 of the POCSO Act. In default of payment of fine three months further imprisonment has been ordered. For offence under Section 8 of the POCSO Act three years rigorous imprisonment and a fine of rupees five thousand has been



imposed. In default of payment of fine, the appellant was directed to undergo 15 days imprisonment. The sentences are to run concurrently.

By the same judgment the learned trial Judge acquitted all the appellants of the charges under Sections 363, 365 and 201 of the Indian Penal Code. Appellant Sharma Sahani was acquitted of the charge under Section 17 of the POCSO Act.

2. On 03.05.2015 at 2:30 PM, the SHO of Nautan Police Station recorded fardbeyan (Exhibit-1) of PW 3 Urmila Devi, the mother of the victim girl, at M.J.R. Hospital, Bettiah. According to FIR of PW 3, on 28.04.2015 the informant had gone to Banaras for her own treatment. In the house only a son and three daughters were there. At Banaras itself, she got telephonic information that when the victim girl, aged about ten years, was alone in the house, on 01.05.2015 at about 3:00 PM appellant Sharma Sahani entered into the house and committed rape against her. On 02.05.2015 when the informant returned to her house she found the victim in a critical condition. She wanted to go to the police station along with the victim. However, appellant Madan Sahani, Munna Sahani, Jagdish Sahani and Nitish Sahani did not allow her to go to the police



station saying that this is a family matter and they would settle it in the panchayat. Thereafter, Madan Sahani and others took her as well as to her daughter to Kaithwaliya where the daughter of the informant was hospitalized in a private clinic. The appellants were threatening not to lodge criminal case.

3. On the basis of report aforesaid Nautan P.S. Case No.118 of 2015 was registered. After investigation the police submitted charge sheet and the appellants were put on trial. The prosecution examined altogether nine witnesses during trial and the defence produced three witnesses who are extensively referred in the trial Court judgment.

4. Mr. Bashishtha Narayan Mishra, learned counsel for the appellants, contends that there is delay in lodging of the FIR and there is no reasonable explanation for such delay which creates serious doubt on the prosecution case. The prosecutrix is not corroborated by the medical evidence. Due to old land dispute between the agnates (i.e., prosecution side and the accused), the false case was lodged. Besides there are material contradictions in the testimony of the prosecutrix and other witnesses. No offence under Section 17 of the POCSO Act is made out against any of the appellants.

5. To contra, Mr. Sachida Nand Rai, learned



counsel for the respondent, contends that the law is well settled that prosecutrix cannot be disbelieved for minor discrepancies and there is no need for corroboration by medical evidence if the prosecutrix is consistent on the manner of occurrence, place of occurrence and identity of the perpetrator of the crime. The learned trial Judge has considered, in threadbare manner, the evidences on the record adduced by the parties and has recorded the judgment of conviction. Unless there is error of record and material irregularity in consideration of the prosecution evidence this Court should not interfere with the judgment of conviction.

6. It is well settled by a catena of judicial pronouncements that while appreciating the evidence of the victim of sexual assault, it should be treated on a par with the evidence of an injured witness. The reason is simple that a girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society. When, in face of these factors, the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. In normal course, the



Indian Women has tendency to conceal such offence even before her family members much less before public or before the police. Therefore, testimony of the prosecutrix to some extent, stands on higher pedestal than that of an injured witness.

Corroboration is not an imperative component of judicial credence in every case of rape. Refusal to act on the testimony of the victim of sexual assault, in absence of corroboration as a rule, is adding insults to the injury. If the Doctor, who examined the victim, does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. If totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have strong motive to falsely implicate the person charged, the Court should ordinarily have no hesitation in accepting her evidence as no self-respecting women would come forward to make a self-humiliating statement in casual manner.

The Court ought to be mindful that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault, it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the



very sole of the helpless female. The Court, therefore, shoulders a greater responsibility and must deal with such cases with utmost sensitivity. The broader probabilities of the case should be examined. Minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, should not come in the way to otherwise reliable prosecution case. Reference may be made to **State of Punjab Vs. Gurmit Singh and Ors**, reported in (1996)2 SCC 384 and **Motilal Vs. State of M.P.**, reported in (2008)11 SCC 20.

At the same time in **Raju & Ors Vs. State of Madhya Pradesh**, reported in (2008) 15 SCC 133, the Hon'ble Supreme Court cautioned by saying that no doubt, rape causes greater distress and humiliation to the victim, but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. Therefore, the accused must also be protected against the possibility of false implication. The Court should carefully see that the prosecutrix is consistent in her statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. The prosecutrix should be in a position to withstand the cross examination of



any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the person involved, as well as the sequence of it. If other witnesses are there, there must be consistent match with the version of every other witnesses. If the testimony of the prosecutrix withstands the aforesaid test, she would be treated as a “sterling witness” and no corroboration is needed to base the conviction on the sole testimony of the prosecutrix. Reference may be made to **Rai Sandeep @ Deepu Vs. State (NCT of Delhi)** reported in **(2012) 8 SCC 21**.

It is equally settled that while appreciating the evidences on the record, the Court is competent enough to separate the grains from the chaff unless they are intrinsically mixed and inseparable. The victim girl was examined as PW 1 on 14th July, 2016. She deposed that the occurrence took place about a year ago at 3:00 PM. She was in her house. At the same time, appellant Sharma Sahani entered into the house tied her mouth and ravished her. When PW 2 Pramila Devi reached on alarm the appellant fled away. She further deposed that other appellants did not allow her or anyone to lodge a criminal case; rather took the victim and other family members to Kaithwalia to hide them. But the police came and took them to the



government hospital at Bettiah where the victim was treated. There is nothing in the cross-examination of this witness to doubt her trustworthiness. PW 2 Pramila Devi deposed that on hearing alarm of the victim she went inside the house of the victim and saw the appellant committing rape against the victim by putting clothes into the mouth of the victim. On arrival of Pramila the appellant fled away. The witness has stated that her house is just by the side of the house of the victim. PW 2 was confronted with her statement before the police that she had not said that she saw the appellant committing rape against the victim. When attention of the Investigating Officer (PW 4) was drawn to this evidence of PW 2, the Investigating Officer stated that though the witness had not said before him that she had seen the appellant committing rape against the informant. However, PW 2 had stated before the police that when she reached in the house of the victim she saw clothes were put in the mouth of the victim and the appellant was fleeing from there.

PW 3 Urmila Devi, the mother of the victim, has supported the allegation as hearsay witness. PW 5 Hari Sahani, the father of the victim, supported the allegation as hearsay witness and stated that at the time of occurrence he had gone to



work in the house of the referred co-villager. PW 6 Kishore Sahani has supported the prosecution case as hearsay witness.

PW 7 Dr. Manju Jaiswal and PW 8 Dr. Rashmi Nand Kuliya are doctors, who were members of the Medical Board constituted for medical examination of the prosecutrix by order of the District Magistrate, and they had occasion to examine the victim on 11.06.2015. PW 9 Dr. Akanksha had examined the victim on 03.05.2015 itself i.e., on the date of FIR. According to the doctors, there was no recent sign of rape though the hymen was old torn. The doctors did not find any external or internal injury on genitalia. The age of the victim was assessed between 11 to 13 years.

The defence witnesses DW 1 Deo Kumar Sahani, DW 2 Murlidhar Sahani and DW 3 Navin Baitha deposed that the present one is a false case due to land dispute between the parties.

7. From the evidence on record it is evident that the delay in lodging of the first information report is well explained. According to PW 5, when he got information about the occurrence on telephone he readily return back to his house. He wanted to go to the police station along with the victim but other appellants locked him inside a room asking not to lodge a



case before the police. PW 5 informed to his wife at Banaras, who returned on the next day. Thereafter, the accused persons took the trio i.e., the victim and her parents to Kaithwaliya just to prevent information of the occurrence to the police. When the police got information, the police went to Kaithwaliya and brought the victim and her parents to M.J.K. Government Hospital, Bettiah, where victim was treated and fardbeyan of her mother was recorded. Therefore, I do not find that the delay in lodging of the FIR is material and unexplained one to doubt the prosecution version.

8. Though there is suggestion to almost all the prosecution witnesses that there is land dispute between the parties but the prosecution witnesses have categorically denied any land dispute between the parties. No material has been brought on the record to substantiate any land dispute between the parties or any apparent dispute. Exhibit-A is cognizance order in Nautan P.S. Case No.41 of 2003, Exhibit-B is FIR and Exhibit-C is charge sheet of Nautan P.S. Case No.41 of 2003, Exhibit-D is a notice in a proceeding under Section 144 Cr.P.C. and Exhibit-E is an order passed by the State Election Commissioner. In none of the cases the victim or her parents were party. Therefore, there is no substance in the submission



of learned counsel for the appellants that for land dispute/any dispute the present case was lodged. Moreover, it is highly unbelievable that for any hidden property dispute between the agnates a girl would make a self-humiliating statement against her own chastity, honour and dignity.

9. Appellants have hammered the prosecution case on the basis of following discrepancies/ contradictions:- According to the prosecutrix, her both parents had gone to Banaras on the date of occurrence; whereas her mother has deposed that she alone had gone to Banaras and her father deposed that he had not gone to Banaras; rather he was in the village itself.

10. The aforesaid minor discrepancy cannot be taken as running contrary to the main allegation levelled by the prosecutrix. Both the parents of the victim are illiterate. Hence, if the mother states that she returned after two days of occurrence from Banaras and her fardbeyan was recorded only on the third day, the aforesaid is not going to make any difference on the trustworthiness of the prosecution case.

PW 3 deposed that at Kaithwaliya no treatment was given to the victim whereas the victim stated that she got treatment at Kaithwaliya also. The victim says that she was



hospitalized in the government hospital for four days; whereas her parents says that she was hospitalized for 15 to 20 days/20 to 25 days. The aforesaid exaggeration might be result of the expectation of the illiterate parents that the perpetrator of the crime would be meted out with severe punishment. The aforesaid conflict is separable and cannot tell upon trustworthiness of the main allegation levelled. The prosecutrix and her parents are consistent that prior to the present occurrence one Sudhir Sahani had ravished the same prosecutrix and for that a criminal case was going on and Sudhir was in custody on the date of examination of PW 5. Only for the reason that the prosecutrix deposed that sudhir is trying to compromise the case would not make the victim unbelievable.

11. On careful consideration of the prosecution evidence, I am of the view that the prosecutrix is consistent in material particular from very beginning, i.e., her statement recorded under Section 161 Cr.P.C., 164 Cr. P.C. and thereafter as prosecution witness No.1 during trial in the matter of place of occurrence, manner of occurrence, date and time of occurrence and identity of the perpetrator of the crime. The witness has withstand the test of cross-examination and minor discrepancy as to who reached first or where she was carried first for



treatment would not make her unworthy of credence. Her testimony finds corroboration from the evidence of PW 2, who reached at the time of incident, and from other witnesses who claims to have heard about the occurrence. The medical opinion is not totally inconsistent with the version of the prosecutrix. Before information to the police or medical examination, the victim was taken to different places. Hence, if some of the signs of sexual assault, on physical observation, was not noticed on the person of the victim by the doctor that cannot make the victim unreliable. It is consistent case of the prosecution that the victim was aged about ten years on the date of occurrence. The doctor has assessed her age between 11 to 13 years. The aforesaid evidence has not been contradicted or confronted by the defence. Though the evidence of exact age of the victim is not available on the record. However, the difference of the age of the victim and age of getting majority is so wide that any prudent person can come to the conclusion that the victim was a child on the date of occurrence. Therefore, in my view, conviction of appellant Sharma Sahani does not require any interference. Since the learned trial Judge has awarded minimum punishment prescribed under law to Sharma Sahani the same also does not require any interference.



12. In the result, the impugned judgment of conviction and sentence passed against appellant Sharma Sahani is hereby affirmed and Cr. Appeal (SJ) No. 2459 of 2017 stands dismissed.

13. So far appellants of Cr. Appeal (SJ) No. 1850 of 2017 are concerned, there is no evidence that their act is covered by the definition of the offence under Section 17 of the POCSO Act, 2012, which reads as follows:

***“17. Punishment for abetment.-
Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.***

Explanation.- An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.”

14. Evidently, there is no prosecution case that these appellants had abetted any offence under the Act and the offence was committed in consequence of the abetment. Hence, conviction of these appellants under Section 17 of the POCSO Act is not sustainable in law. Accordingly, the impugned judgment of conviction and sentence passed against the appellants of Cr. Appeal (SJ) No. 1850 of 2017 stands hereby



set aside and the appeal is allowed. Appellants, namely, Madan Sahani, Munna Sahani, Jagdish Sahani and Nitish Sahani @ Niteesh Sahani, are exonerated from the liability of their bail-bonds.

(Birendra Kumar, J)

Mkr./-

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CAV DATE	26.03.2021
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