

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.528 of 2019

Arising Out of PS. Case No.-35 Year-2013 Thana- CHENARI District- Rohtas

Ramesh Paswan Son of Shri Lal Bahadur Paswan @ Lal Bahadur Ram
Resident of Village- Turki, Police Station- Chenari, District- Rohtas. Sasaram
... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Baxi S.R.P. Sinha, Sr. Advocate Mr. Giridhar Gopal Tiwary, Advocate Mr. Brajesh Prasad Gupta, Advocate Mr. Satendra Prasad, Advocate
For the Respondent	:	Ms. Shashi Bala Verma, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 17-10-2022

“I do not know the meaning of investigation

(अनुसन्धान का अर्थ मैं नहीं जनता की अनुसन्धान का अर्थ क्या होता है)”; “I have

not read the Police Manual (मैं पुलिस मैनुअल नहीं पढ़ा हूँ)”. These are

few excerpts from deposition of the Investigating Officer (PW-

8) to whom the investigation of Chenari P.S. Case No. 35 of

2013 registered for the offence punishable under Section 366A

of the Indian penal Code (IPC in short) to which Section 376D

of the IPC was subsequently added, was handed over. The

consequence of the investigation so conducted by P.W.-8 can be

easily seen on threadbare analysis of the evidence adduced at



the trial based on which the trial court has recorded the appellant's conviction.

2. This appeal has been preferred by the appellant under Section 374(2) of the Code of Criminal Procedure, 1973 (Cr.P.C.) assailing the judgment of conviction dated 22.02.2019 and order of sentence dated 02.03.2019 passed by the learned 1st Additional Sessions Judge, Rohtas at Sasaram in Session Trial No. 262 of 2014 arising out of Chenari P.S. Case no. 35 of 2013, whereby the appellant has been convicted and sentenced as under:

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
366A of the Indian Penal Code	R.I. for seven years	25,000/-	S.I. for four months
376D of the Indian Penal Code	R.I. for 20 years	1,00,000/-	-

3. The name of the victim who has been examined at the trial as P.W.-3 has been concealed in the present judgment and has been referred to as victim/P.W.-3. Father of the victim is the informant based on written report of the informant (P.W.-5) dated 24.09.2013, the First Information Report (F.I.R. for brevity) came to be registered. According to the prosecution's case as disclosed in the written report, the informant's daughter, the victim, a minor aged 13 years had left her house at 9:00 am in the morning on 16.09.2013 for school viz. *Uchh Vidyalaya*,



Sadokhar for study. She, however, did not return till late in the evening, whereafter he started searching for the victim but she could not be found. On 19.09.2013 at 06:00 am, the informant received a call on his mobile no. 8002065323 from a mobile phone bearing no. 9572698541. The victim was on the other side of the call who told the informant that she was at Gaya. He could overhear the voice of an unidentified person who appeared to be by the side of the victim during the call. The informant thereafter attempted to connect the said mobile no. 9572698541 again but he stood confused because the sound which was coming from the other side was unclear. He alleged in a written report that with illicit motive, his daughter had been enticed and kidnapped. With the aforesaid allegation, the F.I.R came to be registered five days after the informant had talked to the victim and eight days after the victim had become traceless.

4. From the evidence of the Investigating Officer (P.W.-8) it appears that the victim was recovered on 27.09.2013 by him from the Railway Station, Sasaram. The statement of the victim was recorded under Section 164 of the Cr.P.C. before learned Magistrate 1st Class.

5. She alleged in her statement under Section 164 of the Cr.P.C. that when she was on her way to school, her co-



villagers, Ramashray Singh, Ramesh Paswan (the appellant), Nagendra Paswan and a native of the village of her maternal grandmother, namely, Harendra Paswan came in and intercepted her in a Marshal vehicle. They offered her to drop her to the school. She sat in the car but was not dropped at the school. Her eyes and mouth were wrapped by them; she was made to sit under the seat of the car, and they took her to some unknown place where all of them raped her. On 19.01.2013 they left her in a room where there lived female who would feed her and would beat her up as and when the victim cried. On 26.09.2013 when all the persons named in her statement under Section 164 of the Cr.P.C. returned to the room, the said female advised them to drop the victim to the same place from where she was brought and accordingly she was dropped at Sasaram Railway Station. She also disclosed that on 19.09.2013, when the victim was crying, they had made her talk with the informant and had asked her to tell the informant that she was at Gaya. On 19.09.2013, she was allowed to talk with her family members, whereafter she had talked with her sister. Appellant is said to have snatched mobile phone from the victim when she was talking and told her sister that they were talking from Gaya. On 27.09.2013, when the informant was at Railway Station, she



called the informant borrowing someone else's mobile phone whereafter the informant came to the railway station with the police. She was thereafter taken to the police station upon which she was medically examined. The police, upon completion of investigation submitted the charge-sheet for commission of the offences punishable under Sections 341, 323, 324, 363, 307 and 376G of the Indian Penal Code (I.P.C. for brevity) against the appellant, on 27.12.2013, while keeping the investigation pending against others. Cognizance was taken by the learned Chief Judicial Magistrate, Sasaram on 06.01.2014. Subsequently, the case was committed to the Court of Sessions whereafter charge came to be framed on 17.10.2014 for the offences punishable under Sections 323, 341, 342, 366A, 307 and 376D of the I.P.C.. At the trial, altogether eight prosecution's witnesses were examined and certain documents including the medical report were exhibited at the trial.

6. After closure of the evidence of prosecutions witnesses the circumstances emerging against the appellant were explained by the Trial Court for seeking his response in accordance with Section 313 of the Cr.P.C.. He denied all such circumstances as explained to him, in his response.

7. At the outset, we consider it apt to record that



P.W.-1 and P.W.-4 have been declared hostile, P.W.-2 is the maternal grandfather of the victim. His evidence is based on what was disclosed to him. P.W.-3, as has been noted, is the victim herself. P.W.-4 is nephew (*Bhagina*) of P.W.-2 who is a witness of recovery of the victim from railway station. P.W.-5 is the informant whereas P.W.-7 is the doctor who proved the report of the Medical Board constituted for determination of the age of the victim, which disclosed that her age was between 18 to 19 years as on the date when she was medically examined. The lady doctor, who had examined the victim was not examined at the trial, her report is though there on record though its contents have not been proved.

8. The victim P.W.-3 in her deposition at the trial, for the first time, deposed that co-accused Ramashray Singh had come out of the Marshal vehicle and offered her to be dropped at the school in Marshal vehicle which she had denied. However, he forced her to sit in the car in which Ramesh Paswan, Harendra Paswan and Nagendra Paswan were already sitting. When the P.W.-3 tried to scream, co-accused Ramashray pressed her mouth and forced her to sit on the floor of the vehicle. They, thereafter, started assaulting her because of which she had become unconscious. When she regained consciousness,



she found herself in a hut at a desolate place where all the accused persons raped her. On 27.09.2013, the accused persons dropped her at Sasaram Railway Station, whereupon she informed her parents. Thereafter her father (P.W.-5), her maternal grandfather, (P.W.-2), brother etc., came with the police at railway station. She narrated the entire episode to the police in presence of her family members. In her cross-examination, she deposed that she was living in her *Nanihal* (village of victim's maternal grandfather) in the village Ugahani. The distance between Turki (which is the village of P.W.-5, the informant) and Ugahani is 3 kilometers. She further deposed that the hut, to which she was taken, was open from all sides where all the accused persons had raped her, one-by-one. After fourth rape, she had become unconscious and after she regained consciousness, she had found herself in a room. She was wearing the same clothes which had become stained and till 27.09.2013 she was wearing the same clothes, which she was wearing on the date when she was kidnapped. After her medical examination her clothes were seized by the police. She further disclosed that from 16.09.2013 to 26.09.2013 she was raped by all the accused persons 8-9 times and last time she was raped on 19.09.2013.



9. P.W.-4, a nephew of P.W.-2, in his deposition stated that the informant had informed him that the victim had made a call on 27.09.2013 whereafter he had gone to Chenari Police Station. It may be noted that the informant, P.W.-5, in his cross-examination, deposed that during the course of investigation he had not stated before the police that he had also gone to the railway station rather she had simply told the police about the kidnapping and rape of the victim by the aforesaid four persons.

10. The Investigating Officer (PW-8) in his evidence at the trial deposed that the house of the informant in village Turki was the place of occurrence which he had visited, during the course of investigation. He further deposed that the victim was recovered from railway station, Sasaram. As has been noted in the beginning, he admitted that he did not know the meaning of investigation and what is an investigation. He admitted that at no place in his case diary he had discussed about the place of occurrence. He had though collected the CDR of the phone number mentioned in the written report of the informant and had found that the said number was in the name of Ram Pravesh Ram whom he had met but he did not record in the case diary the date when he had met him. His statement has



neither been recorded in the case diary nor he has been made an accused in the criminal case. Though the victim was recovered at 9:30 am on 27.09.2013 at the railway station, he did not record the time of recovery in the case diary. He had recorded the statement of the victim at the railway station but he did not record the time when her statement was recorded in the case diary. He did not apply before the Court for taking appellant on remand for his interrogation. In that course, he deposed that he had not read the Police Manual. He did not make any investigation as to the places where the victim was made to stay from 16.09.2013 to 26.09.2013. He did not make any attempt to locate the Marshal vehicle which was used, according to the prosecution's case, by the miscreants. Though he had examined independent witnesses also during the course of investigation, but in the case diary, he had not described them as independent witnesses. In response to a query at the cross-examination, the Investigating Officer deposed that he did not inquire as to from which place the victim had come to the Railway Station nor did he make any enquiry in this regard. He further deposed that his investigation was not defective because he did not know the meaning of investigation.

11. Mr. Baxi S.R.P. Sinha, learned Senior Counsel



appearing on behalf of the appellant has submitted that conviction recorded by the Trial Court of the offences punishable under Section 366A of the I.P.C. is wholly unsustainable for the reason that not only that the prosecution has failed to establish that the victim was a minor as on the date of occurrence, she has been rather found to be major (18-19 years) by the Medical Board. He has further submitted that the conviction of the appellant for commission of offence punishable under Section 376D of the I.P.C. is unsustainable as the same is based solely on the untrustworthy evidence of the victim without any corroboration. He has submitted that the victim was put to medical examination by a lady doctor, who, upon the examination, had found no sign of rape. Though the victim was medically examined on 27.09.2013 and according to her deposition, she was raped 8-9 times between 16.09.2013 to 26.09.2013, last rape having been committed on 19.09.2013, it is highly improbable that no sign of sexual assault would be found present even after eight days. He has submitted that prosecution intentionally withheld the lady doctor for being examined at the trial to prove the medical report which did not corroborate the prosecution's case of rape. He has further submitted that there is no report of any forensic examination



done of clothes of the victim which she was wearing. As per the prosecution's case, right from the time of occurrence on 16.09.2013 till she was found on 27.09.2013, she was wearing the same clothes, which were seized by the police. He has also submitted that the victim (P.W.-3) cannot be treated to be sterling witness, considering patent contradictions between her statement under Section 164 of the Cr.P.C and at the trial, right from the manner in which she is said to have been kidnapped. Referring to the evidence of the Investigating Officer, he has submitted that the I.O. has completely failed in its duty to discern the truth by not making any attempt to find out the place where the victim was allegedly taken to and the Marshal vehicle which was used, according to the victim, for kidnapping her. Such investigation could have unravelled the truth.

12. Learned Additional Public Prosecutor appearing on behalf of the State has, on the other hand, submitted that the victim is truthful in her evidence and has consistently deposed before the police in her statement under Section 164 of the Cr.P.C. and at the trial detailing the manner in which she was kidnapped and subsequently raped by all the accused persons including this appellant. She has submitted that as the evidence of the victim is reliable, no corroboration by medical evidence is



required to establish charge of rape. She has submitted that the Trial Court has rightly recorded conviction of the appellant upon due scrutiny, analysis, evaluation and appreciation of the evidence adduced at the trial.

13. Before we begin dealing with the evidence of the prosecution's witnesses, we consider it desirable to briefly narrate, at the cost of repetition, the chain of events beginning from the date when the victim disappeared till the date she was recovered. This exercise has been undertaken to emphasize total inaction on the part of the investigating agency in its attempt to unravel the truth which is the primary duty of an agency investigating into an occurrence of commission of criminal offence, more so of serious nature punishable under Sections 366A and 376D of the IPC. The victim was missing since morning of 16.09.2013. For the first time, the victim is said to have contacted the informant on his mobile phone on 19.09.2013. The F.I.R. was registered on 24.09.2013; on 27.09.2013 the victim called her family members after borrowing someone else's mobile phone and told them that she was at Sasaram Railway Station. The informant rushed to the police station first to inform the police about the presence of victim at the Railway Station. The victim was subsequently



found at the Railway Station in the morning. What had happened immediately after investigation was undertaken by the police upon registration of F.I.R. on 24.09.2013 before the victim was recovered on 27.09.2013 is not known. The informant is said to have received a call from her daughter borrowing someone else's mobile phone. There is no disclosure as to the number of the mobile phone which was used by the victim for calling her parents. No effort was made by the investigating agency to find out as to when the informant had received the call from the victim disclosing her presence at the Railway Station.

14. Further, it would be worth noticing that no investigation was conducted to find out the truth after the victim was recovered on 27.09.2013 and made her disclosure about multiple rapes committed on her by the persons made accused including this appellant. After recovery of the victim, her statement was recored under Section 164 of the Cr.P.C. on 28.09.2013. On 27.09.2013, for determination of her age at Sadar Hospital, Sasaram, she was sent to Primary Health Center Dehri for her medical examination as according to the I.O., no lady doctor was available at Sasaram. The finding of the Doctor, thought not proved at the trial, is there on lower court records



relevant portion of which read as under:-

“On examination- There is no injury no foreign particle seen on any part of her body including her private part. Stain present on her Salwar and Panti. Panti of sky colour and Salwar Kurta and Dupatta of red colour sealed in a plastic bag, labelled and duly signed by me and handed over to S.I. Shri Ranjeet Kumar for forensic examination. Hymen ruptured old tear, vagina admit one finger easily. She is menstruating. Vaginal swab taken and sent for microscopical examination report received which is attached. Urine sent for pregnancy test. Report received which is attached.

Opinion- On the basis of chemical examination and report of vaginal swab examination it is difficult to say whether recent intercourse has been done. Report of urine test for pregnancy is negative.

(I) I examined vaginal swab of the victim on 27.09.2013 and found following facts on microscopy-

- 1. No spermatozoa, either alive or dead, found.*
- 2. R.B.C.- 0-4/H.P.F.*
- 3. W.B.C. 0-1/H.P.F.*
- 4. Epith cells- 2-30/H.P.F.*

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(II) Pregnancy Test - Negative”

15. We are conscious of the fact that the medical report of the lady doctor has not been exhibited. From the evidence of the Investigating Officer, it is manifest that there was absolutely no investigation done by the police after medical examination of the victim. Till the police submitted charge-sheet



on 07.11.2013, no effort at all was made to trace the path traversed by the miscreants to take the victim to the place of occurrence where, according to the victim, she was raped. Further, the most unfortunate part of the investigation is that the investigating officer has treated the house of the informant as the place of occurrence. It is further shocking to notice that the investigating officer did not even interrogate the appellant who had surrendered and was in judicial custody. The I.O. was under the impression that since the appellant was in judicial custody, he could not be interrogated, evidently because he was not knowing what does the investigation into a crime mean and because he had no knowledge about how an investigation is conducted.

16. In the absence of any corroborative evidence other than the evidence of the victim, in the aforesaid background, the Trial Court has recorded the appellant's conviction based on the sole testimony of the victim (P.W.-3).

17. The question arises, in the present appeal as to whether, in the facts and circumstances, it is safe for this Court to uphold the finding of conviction recorded by the Trial Court of the appellant's conviction for the commission of the offences punishable under Sections 366A and Section 376D of the I.P.C..



It is noteworthy that, though, charges were also framed for commission of the offences under Section 323, 341 and 307 of the I.P.C., but in the absence of sufficient evidence to prove the said charges, the appellant has not been acquitted of these charges, by the judgment and order of the Trial Court under appeal.

18. We consider it desirable to observe, after having noticed the above mentioned aspects, neutrality in investigation of a criminal offence is the hallmark of a fair investigation. It is the responsibility of the investigating agency to make earnest endeavor to unravel the truth. An investigating agency is not supposed to accept what is asserted by the complainant or victim as a gospel of truth. It has an onerous duty, not only to make its best efforts to find out as to whether the allegation of commission of offence, as is being alleged by the informant/complainant/victim is correct in a reasoned and scientific manner, in accordance with law. The investigating agency has then a duty to find out the perpetrator of the crime based on the evidence collected during the course of a fairly conducted investigation. There are three important duties cast upon an investigating agency. Firstly, the truth is unraveled and real offender is found out. Secondly, an innocent person is not



put to harassment because of unfair, insufficient and shoddy investigation. Thirdly, as far as possible, all relevant materials in the form of evidence are collected to establish the truth before the Court at the Trial. Failure on the part of the investigating agency may result into an offender going scot free without evidence or an innocent person facing trial despite insufficient or false evidence. We are conscious of the settled legal position that flaws or defects in the investigation cannot be the basis for the criminal courts to reject the prosecution's case. We are, at the same time, inclined to notice the observation made by the Supreme Court in case of ***Kumar v. State*** reported in **(2018) 7 SCC 536**, paragraphs 27 and 28 of which read as under :-

“27. The action of investigating authority in pursuing the case in the manner in which they have done must be rebuked. The High Court on this aspect, correctly notices that the police authorities have botched up the arrest for reasons best known to them. Although we are aware of the ratio laid down in Parbhu v. King Emperor [Parbhu v. King Emperor, 1944 SCC OnLine PC 1 : AIR 1944 PC 73] , wherein the Court had ruled that irregularity and illegality of arrest would not affect the culpability of the offence if the same is proved by cogent evidence, yet in this case at hand, such irregularity should be shown deference as the investigating authorities are responsible for suppression of facts.



28. The criminal justice must be above reproach. It is irrelevant whether the falsity lie in the statement of witnesses or the guilt of the accused. The investigative authority has a responsibility to investigate in a fair manner and elicit truth. At the cost of repetition, I must remind the authorities concerned to take up the investigation in a neutral manner, without having regard to the ultimate result. In this case at hand, we cannot close our eyes to what has happened; regardless of guilt or the asserted persuasiveness of the evidence, the aspect wherein the police has actively connived to suppress the facts, cannot be ignored or overlooked.”

19. The said decision in ***Kumar v. State*** (supra) has been relied upon in a recent decision of the Supreme Court in case of ***Arvind Kumar @ Nemichand v. State of Rajasthan*** reported in ***2021 SCC OnLine SC 1099***, paragraph 45 of which reads as under:-

“45. A fair investigation would become a colourable one when there involves a suppression. Suppressing the motive, injuries and other existing factors which will have the effect of modifying or altering the charge would amount to a perfunctory investigation and, therefore, become a false narrative. If the courts find that the foundation of the prosecution case is false and would not conform to the doctrine of fairness as against a conscious suppression, then the very case of the prosecution falls to the ground unless there are unimpeachable



*evidence to come to a conclusion for awarding
a punishment on a different charge.”*

20. In our considered view, in any view of the matter, the appellant's conviction for the offence punishable under Section 366A of the I.P.C. is unsustainable. Section 366A of the I.P.C. reads as under:-

“366A. Procuration of minor girl.—Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.”

21. Prosecution has miserably failed to establish its case that the victim was a minor i.e. below 18 years of age as on the date of occurrence. Further, contrary to the prosecution's case of the victim being a minor, the victim has been found to be between 18-19 years of age by the medical board constituted for the determination of age. Minority of a victim is a condition precedent to prove a case for commission of offence under Section 366A of the I.P.C..

22. Coming to the evidence of the victim (P.W.-3), we have noticed that in the statement recorded under Section



164 of the Cr.P.C., there is no assertion of use of force made by the accused persons, compelling her to enter into the vehicle. She disclosed that the accused persons had offered her to be dropped at school but they did not drop her at the school. In her evidence at the trial, she has made improvements apparently to aggravate the offence as alleged in her statement under Section 164 of the Cr.P.C. that the co-accused Ramashray Singh had got down from the vehicle and had told her that he would drop her at school. When the victim declined, he, with the use of force, made her to sit in the vehicle with other accused persons including this appellant. The Court would have treated this inconsistency between the victim's statement recorded under Section 164 of the Cr.P.C. and her evidence at the trial to be mere exaggeration or minor contradiction, had there been some corroborating evidence and the circumstances emerging from other evidences adduced at the trial. The Court in the present case is faced with a situation where the question is of conviction of an accused based on the sole testimony of the victim. There was no sign of rape proved at the trial, based on the medical evidence. Two of the prosecution witnesses have been declared hostile at the instance of the prosecution. The victim and her family members have deposed in support of the prosecution. We



have noticed contradictions in the evidence of P.W.-2 and P.W.-4 on the point of their presence at the Railway Station from where the victim was recovered. At one stage P.W.-2 deposed that he had reached the Railway Station with P.W.-4 and recovered the victim. P.W.-4 in his deposition has stated that he had not disclosed this fact to the police station during the investigation. The informant, P.W.-5 in his deposition at the trial disclosed that the victim had told her, after she was recovered on 27.09.2013, that she was raped. The attention of the Investigating Officer was drawn to paragraphs No. 5 and 25 of the case diary to contradict the statement of P.W.-5. The Investigating Officer, P.W.-8, has deposed that P.W.-5 in his re-statement had not stated that the co-accused persons had raped the victim.

23. The contradictions in the evidence of the prosecution witnesses, in our opinion, are not minor and inconsequential rather material to create a reasonable doubt on the prosecution's case and the guilt of the appellant. In the Court's opinion, it is not safe to uphold judgment of conviction on the basis of the sole testimony of the victim. In our opinion, the circumstances noted above raise reasonable doubts in the prosecution's case, benefit of which will go to the appellant.

24. Accordingly, judgment of conviction dated



22.02.2019 and order of sentence dated 02.03.2019 passed by learned 1st Additional Sessions Judge, Rohtas at Sasaram in Session Trial No. 262 of 2014 arising out of Chenari P.S. Case No. 35 of 2013 are hereby set aside. Consequently, the appellant stands acquitted of the said charges by giving him benefit of doubt.

25. The appellant is in custody. Let him be released forthwith, if not required in any other case.

26. This appeal is accordingly allowed.

(Chakradhari Sharan Singh, J)

I agree
Khatim Reza, J:

(Khatim Reza, J)

K.K.RAO/Annpurna-

AFR/NAFR	NAFR
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