

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.754 of 2019

Arising Out of PS. Case No.-74 Year-2016 Thana- MAHILA P.S. District- Madhubani

Raju Kumar Yadav @ Raju Yadav Son of Late Ravindra Yadav Resident of
Village- Champa, P.S.- Arer, District- Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Murari Narain Chaudhary, Advocate Mr. Vijay Kumar, Advocate Mr. Sabiha Hayat, Advocate
For the Respondent/s	:	Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 13-10-2022

Heard Mr. Murari Narain Chaudhary, learned counsel appearing on behalf of the appellant and Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State.

2. By the impugned judgment and order dated 26.04.2019 passed by the Court of learned Additional Sessions Judge-cum-Special Judge (POCSO), Madhubani in G.R. No. 44 of 2016, arising out of Mahila P.S. Case No. 74 of 2016, this appellant has been convicted and sentenced as under:-

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
Section 376 of the IPC	Imprisonment for life	1,00,000/-	S.I. for 6 months
Section 4 of Protection of Children from	Imprisonment for 10 years	10,000/-	S.I. for 6 months



Sexual Offences Act, 2012, (POCSO Act for short)			
3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [SC and ST Act (PoA) Act for short]	Imprisonment for 2 years	5,000/-	S.I. for 3 months

3. The victim's name is being concealed in the present judgment and order and is being referred to as the victim/PW-1.

4. PW-1 is the informant of the concerned Bhimpatii, Mahila P.S. Case No. 74 of 2016 registered on 03.08.2016 based on her *fardbeyan* recorded on 03.08.2016, with reference to an occurrence which, according to her had taken place on 29.07.2017. According to her *fardbeyan*, the informant's father had died nearly ten years ago and her mother alone was supporting the informant and her three other siblings. She disclosed her age to be 14 years as on the date of occurrence. She alleged that on 27.07.2016, her mother had gone for ablutions to Simariya Ghat, in the evening at 7:00 pm. on 27.07.2016 the informant come out of her house and moved nearly 100 yards away, to ease herself in the field of one Hakim. Taking advantage of her loneliness, the appellant caught her and after gagging her the appellant committed rape on her. On her screaming, the appellant fled away, leaving her behind. After



she returned, she attempted to have a meeting of the '*Panchas*' of the village for raising the issue, but as no '*panchayat*' could be held till 02.08.2016, the informant's mother brought her to the Police Station on 03.08.2016. As as been indicated, her *fardbeyan* was recorded thereafter, by a lady Assistant Sub-Inspector of Police based on which the said First Information Report came to be registered for commission of the offences punishable under Section 376 of the Indian Penal Code, Section 4 of the POCSO Act and Sections 3(1)(v) and 3(1)(xii) of the SC and ST (PoA) Act.

5. After completion of investigation the police submitted its charge-sheet on 14.09.2017 for the offences punishable under Section 376 of the Indian Penal Code, Section 4 of the POCSO Act and Sections 3(1)(v) and 3(1)(xii) of the SC and ST (PoA) Act. The cognizance was subsequently taken of commission of offences under the aforesaid provisions. The Court of learned Additional District and Sessions Judge-Cum-Special Judge POCSO, thereafter, framed charges for commission of offences punishable under Section 376 of the Indian Penal Code, Section 4 of the POCSO Act and Sections 3(1)(v) and 3(1)(xii) of the SC and ST (PoA) Act.

6. At the trial altogether six prosecution witnesses came to be examined including, the Investigating Office(PW-4),



the Doctor, who proved the determination of age of the victim(PW-5) and the Doctor, who had medically examined the witness as PW-6, in the wake of accusation of rape. The victim was examined as PW-1, her mother as PW-2. One Dukhi Das, a co-villager came to be examined as PW-3. PW-3 is apparently a *hearsay* witness. The age of the victim came to be determined by the Medical Board as approximately 16 years, as on the date of examination by the Medical Board. The victim was examined on 03.08.2016 by the Doctor. The Doctor (PW-6), on medical examination, did not find any sign of rape.

7. The appellant was thereafter examined by the trial court under Section 313 of the Code of Criminal Procedure, 1973, (Cr.P.C. in short) upon explaining the circumstance emerging against him based on evidence of the prosecution. His response was denial of all such circumstances.

8. PW-1, the victim, in her deposition, fully supported the prosecution's case as had been disclosed in her *fardbeyan*. It is noted that the statement of victim was recorded under Section 164 of the Cr.P.C. before a Magistrate. The Magistrate before whom the statement of victim was recorded, however, was not examined at the trial. In her cross-examination, PW-1 disclosed that she had left her house to go to the field to ease herself at 7.00 pm. The time taken to reach the



place was about five minutes. She returned back to house at 9.00 pm. She further disclosed that on the next day of the occurrence, a *panchayat* was held near the doorway of the house of one Ram Prakash Yadav, in connection with the said occurrence. The said Ram Prakash Yadav has, however, not been examined. In response to a query during the cross-examination the victim/PW-1 deposed that before the date of occurrence she did not know the appellant and someone else had disclosed to her the appellant's name. She further deposed that one Dukhi Das (PW-3) had introduced the appellant to her. PW-3, according to the victim, was a respectable person of the village. She further deposed that the field belonged to one Hakim, where she had gone to ease herself, was barren at the time of occurrence and there was no crop in the field. It would be apt at this juncture to refer to deposition of PW-3, Dukhi Das in quick succession, which does not support the evidence of PW-1 to the effect that PW-3 had introduced this appellant to the victim. He (PW-3), in his evidence disclosed that on the next day of occurrence he learnt that the victim was sexually assaulted by the appellant and when he had visited the house of the informant, the informant was lying unconscious. There was a *panchayat* held thereafter, but the accused persons declined to accept the decision of the *Panchas*. In his cross-examination,



PW-3 deposed that there was no previous complain of any nature against the appellant, who was a good person. There is thus apparent contradiction in the prosecution's case as regards the source through which the informant learnt about the name of the appellant, though in the First Information Report, she has named the appellant, who according to her had committed rape. As noted above, in her examination-in-chief, PW-1 deposed that she did not know the appellant before the offence was committed by him, rather the appellant was introduced to her through Dukhi Das (PW-3). However, it does not emerge from the evidence of PW-3 that the appellant was introduced to the victim by him (PW-3). Secondly, in order to explain the delay in registration of the First Information Report the informant stated in her *fardbeyan* that despite efforts, no meeting of *Panchas* was being held and, since till 02.08.2016 no such meeting was held, she was brought by her mother on 03.08.2016 to the police station for making a complaint. Contradicting her own *fardbeyan* in her deposition, during the course of trial, she has clearly stated in paragraph-10 that a meeting of *Panchas* was held on the next day after her mother had returned from Simariya, at the doorway of Ram Prakash Yadav.

9. It would be further significant to note that whereas the victim/PW-1 deposed in her evidence that there was



no crop in the field where she had gone to ease herself and was raped by the appellant, the Investigating Officer in his evidence in Paragraph 9 has mentioned, based on his visit at the place of occurrence that 'paddy' crop was there in the field, where the occurrence according to the informant had taken place.

10. Learned counsel appearing on behalf of the appellant has submitted that conviction recorded by the trial court, based on uncorroborated evidence of the victim/PW-1 in the aforesaid circumstance is unsustainable. He has submitted that the evidence of the victim/PW-1 is not reliable, there being apparent inconsistencies in her own depositions and other contradictions in the prosecution's case emerging from the evidence of other prosecution's witnesses.

11. Learned Additional Public Prosecutor appearing of the State, on the other hand, has submitted that the victim has been found to be a minor upon scientific examination conducted by a medical board of experts. The minor has clearly deposed in her evidence that this appellant had raped her. She has submitted that since the evidence of the victim/PW-1 is trustworthy, no corroboration by medical evidence is required to establish the prosecution's case that she was sexually assaulted. She has further submitted that minor contradictions emerging from the evidence of the witnesses may not be basis for doubting the case



of the prosecution. She has accordingly defended the judgment of conviction and the order of sentence passed by the trial court, which are impugned in the present appeal and has submitted not interference by this Court is warranted.

12. We have perused the impugned judgment and order of the trial court as well as the lower court records. We have carefully gone through the evidence of the witnesses as well as the documentary evidence adduced at the trial. It is the case of the victim that she had gone to ease herself at 7:00 pm. to a place which takes about five minutes to arrive. According to her, she returned to her house at 9:00 pm.. She has further deposed that when she screamed, the appellant fled away after committing rape. According to her, there was no crop in the field where the occurrence had taken place. Further, in her deposition she disclosed that she was not knowing the appellant from before and the appellant was introduced to her by PW-3 (Dukhi Das). In the *fardbeyan*, parentage and the address of the appellant has been mentioned. Dukhi Das has not supported the evidence of PW-1 to the effect that he had introduced the appellant to PW-1. Further, it is glaring to note that in her *fardbeyan* the victim has explained the delay of four days in lodging the F.I.R. as according to her no *panchayat* was being held and she was waiting for a meeting of *Panchas* to be held



and when no meeting of *Panchas* was held till 02.08.2016, her mother took her to the police station to lodge a complaint. The PW-1 has disclosed a different story altogether in her deposition at the trial. According to her, in fact a meeting of *Panchas* was held on the very next day of occurrence. The fact that there was no crop in the field where occurrence had taken place has been contradicted in the evidence of the Investigating Officer, who found paddy crops in the field of Hakim where according to informant the occurrence had taken place. In such circumstance, in the Court's view the evidence of PW-1 cannot be considered to be so unblemished and reliable based on which conviction of the appellant can be upheld, despite there being no corroboration of accusation of rape in the medical evidence.

13. In such view of the matter, the finding recorded by the trial court convicting the appellant for commission of offences punishable under Section 376 of the Indian Penal Code, Section 4 of the POCSO Act cannot be sustained. So far as the appellant's conviction under Section 3(1)(xii) of the SC and ST (PoA) Act is concerned, in our view, such finding recorded by the learned trial court is perverse for the reason that no evidence at all was adduced at the trial that the appellant was knowing the caste of PW-1 and that the offence was committed by the appellant because the victim belonged to a Scheduled



Caste Patna. The impugned judgment and order passed by the trial court is accordingly set aside by giving the appellant benefit of doubt. Consequently the appellant stands acquitted of the charges of the offences punishable under Section 376 of the IPC, Section 4 of the POCSO Act and Section 3(1)(xii) of the SC and ST (PoA) Act.

14. This appeal is accordingly allowed.

15. The appellant is in jail serving sentence. Let him be released forthwith if not required in any other case.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

Anand/Shanu/-

AFR/NAFR	NAFR
CAV DATE	NA
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