

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.306 of 2022**

Arising Out of PS. Case No.-102 Year-2018 Thana- ISHIPUR District- Bhagalpur

Md. Motim @ Md. Md. Motin, Son of Md. Hafizuddin Ansari, Resident of  
Village - Nam Nagar, P.S.- Ishipur Barahat, Distt.- Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

For the Appellant/s : Mr. Ajit Kumar Ojha, Advocate

For the Respondent/s : Mrs. Shashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE A. M. BADAR**  
**and**  
**HONOURABLE MR. JUSTICE SANDEEP KUMAR**  
**ORAL ORDER**

**(Per: HONOURABLE MR. JUSTICE A. M. BADAR)**

4      23-01-2023                      This appeal has come up for consideration of prayer of bail of the appellant Md. Motim @ Md. Motin who along with the co-accused came to be convicted of offences punishable under Sections 341, 323 and 376D of the Indian Penal Code as well as under Section 4(2) of the POCSO Act. He along with co-accused is sentenced to suffer imprisonment for life apart from imposition of fine of Rs.50,000/- for the offence punishable under Section 4(2) of the POCSO Act. However, no separate sentence was awarded to him for the offence punishable under Section 376D of the IPC in the light of provisions of Section 42 of the POCSO Act. Other sentences are imposed on other counts.



Heard the learned counsel appearing for the appellant. He argued that there was pre-existing enmity and land dispute between the parties which has triggered false implication of the appellant in the crime in question. It is argued that though the prosecutrix has deposed that she was injured by a blow of knife, the Medical Officer has stated that the injury was by hard and blunt object. It is further argued that samples of blood and semen were not taken from the appellant and the co-convict and, as such, finding of blood and semen on clothes of the victim female child is of no consequence. It is further stated that P.W.6 brother and P.W.5 who happens to be cousin of the victim female child have categorically stated that the victim female child has not named the accused while disclosing the incident to them. Our attention is also drawn to the evidence of mother of the victim female child to demonstrate that there was enmity and dispute between the parties.

The learned Additional Public Prosecutor opposed the application.

The case in hand is that of a gang rape on the female child. It is well settled that in such situation evidence of the prosecution is required to be considered while keeping broader probabilities of the prosecution case in mind by ignoring minor



inconsistencies. It is also to be noted that in sexual offences, the victims are shy of disclosing the incident as a whole to the others and as such, non-mentioning of names of perpetrator of the crime to brothers by the victim female child at this stage cannot be given any over bearing importance. What is required to be seen is whether version of the victim female child is clear, cogent and trustworthy. It is not pointed out to us as to how version of the prosecutrix is improbable and untrustworthy. She has deposed about commission of rape on her successively by the appellant and the co-convict apart from infliction of wound on her hand by them. The Medical Officer who is examined by the prosecution, namely, P.W.3 Dr. Abhishek Kumar has stated that when he examined the prosecutrix medically, he found that there was a cut over left forearm of size 2 cm x 2.5 cm superficial in nature. May be such cut was caused by hard and blunt object but our practical experience in life makes it clear that a knife which is not sharp and whose edge is blunt can cause such wound. Suffice it to state that version of the prosecutrix is gaining corroboration in material particular from her medical examination. As held by the Hon'ble Supreme Court in the matter of **B.C. Deva vs. State of Karnataka** reported in **(2007) 12 SCC 122**, it is not necessary that medical evidence



should also support the version of the victim of the crime in question. Her evidence, if found trustworthy, can be acted upon even if it remains uncorroborated by other evidence on record. In the case in hand, version of the prosecutrix is gaining corroboration from the fact that in the forensic examination of her clothes, blood and semen were found on her saree and petticoat.

Considering the nature of offence and the manner in which it is committed coupled with the fact that it is supported by the evidence adduced on record by the prosecution, no case for grant of bail is made out though the appellant has reportedly undergone sentence of four years. The prayer for grant of bail is accordingly rejected.

Hearing of the appeal be expedited. The registry to take necessary steps in this regard.

**(A. M. Badar, J)**

**( Sandeep Kumar, J)**

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