

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.328 of 2019

Arising Out of PS. Case No.-465 Year-2015 Thana- KHAJANCHI HAT District- Purnia

Bedanand Yadav Son of Ganeshi Yadav Resident of Village - Shishava, P.S.-
K. Nagar, District- Purnea

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

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

For the Respondent/s : Mr. Bipin Kumar, APP.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 22-11-2023

1. We have heard Mr. Bijendra Kumar Singh, the learned Advocate for the appellant and Mr. Bipin Kumar, the learned APP for the State.
2. The appellant stands convicted under Sections 376, 302, 201 and 326A of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 vide judgment dated 29.01.2019 passed by 1st Additional District and Sessions Judge -cum- Special Judge (POCSO Act), Purnea in Special Case No.52 of



2015/CIS No. 44 of 2015 arising out of K. Nagar P.S. Case No. 465 of 2015 and by order dated 06.02.2019, he has been sentenced to undergo imprisonment for 10 years, to pay a fine of Rs.50,000/- and in default of payment of fine, to further suffer S.I. for four months for the offence under Section 376 of IPC, to undergo R.I. for life, to pay a fine of Rs.50,000/- and in default of payment of fine, to further suffer S.I. for six months for the offence under Section 302, 326A of IPC and to undergo R.I. for five years, to pay a fine of Rs.10,000/- and in default of payment of fine, to further suffer S.I. for two months for the offence under Section 201 of IPC.

3. However, no sentence has been awarded for the offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012, as the appellant has already been sentenced under Section 376 of the IPC. The sentences have been ordered to run concurrently.



4. The appellant is said to have raped and killed his eight year old niece in the night of 18.09.2015 when she was held back at the place where the entire village-folk had gone for immersing the idol of lord Vishwakarma. It was only on the next day i.e. 19.09.2015, that the dead body of the deceased was recovered from the field of one Bhulan Singh, who has not been examined at the trial.

5. According to the prosecution case and especially the fardbeyan of Bhupendra Yadav (P.W. 6) who is the father of the deceased, the deceased along with other children of the village and elders also had gone to the river-side on a tractor for the immersion of the idol of lord Vishwakarma. All the children of the neighbourhood had come back by around 8 P.M. but the deceased had not reached her home. On being questioned, a cousin of the deceased, namely, Kajal Kumari (P.W.1) informed P.W. 6 and others that while the deceased was imploding the appellant to make her board the tractor,



the appellant insisted that she should stay back and that she would be taken to her home on his motorcycle. The informant though looked for his daughter (deceased) in the night but went to the house of the appellant only the next day i.e. on 19.09.2015. He was accompanied by his brother, namely, Guneshwar Yadav (P.W. 7). Both of them met the appellant on way, who first expressed ignorance about the location of the deceased but later told P.Ws. 6 and 7 to go towards Bhulan Singh's field where they might find her. To their dismay and surprise, both of them found the dead body of the deceased in the field of Bhulan Singh. She had been acid burnt also. The dead body was lifted by P.W. 6 and brought back home, where after, the police was informed.

6. The FIR thus was recorded on 19.09.2015 at 11:20 AM at the house of P.W.6. With the afore-noted fardbeyan having been recorded, a case vide K. Nagar P.S. Case No. 465 of 2015 dated 19.09.2015 was



registered for investigation for offences under Section 376(A), 302, 201, 326(A) of the IPC and under Section 3 and 4 of the Protection of Children from Sexual Offences Act, 2012. The police after investigation submitted charge-sheet, whereupon cognizance was taken and the appellant was put on trial.

7. The learned Trial Court, after having examined ten witnesses on behalf of the prosecution and four on behalf of the defence, convicted and sentenced the appellant as aforesaid.

8. During the Trial, Kajal Kumari (P.W. 1), a nine year old cousin of the deceased has deposed that while she and other children of the village was coming back home after immersion, the deceased stayed back on the insistence of the appellant, who had promised to reach her home on his motorcycle. She had stated this before the parents of the deceased in the night on 18.09.2015 only. The tractor was being driven by one Binda Sah.



9. The mother of the deceased, namely, Rekha Devi (P.W. 2), however, had a different story to narrate than what P.W. 6 has stated in the fardbeyan. When the deceased did not come back home in the night of 18.09.2015, she asked about her from P.W. 1 for the reason that P.W. 1 had accompanied the deceased to the Ghat. When she talked about appellant having promised to reach her home on his motorcycle, she, her husband (P.W. 6) and her brother-in-law (P.W. 7) though looked for the deceased all around of the village but did not go to the house of the appellant. It was only in the next morning that the appellant was accosted by her husband and brother-in-law, who gave them some direction to locate the deceased.

10. The appellant is related to the family of the deceased. The tractor was driven by the son of the appellant while taking the children to the Ghat. Many persons had gone to the Ghat along with the deceased.



11. A co-villager/ Rudal Yadav (P.W. 3) had only learnt that the deceased had been raped and killed by sprinkling acid on her, but he did not name the appellant as the person who had committed the offence. Another co-villager, namely, Raj Kumar Singh (P.W. 4) also had no idea as he had not heard anything about the complicity of the appellant in the killing of the deceased.

12. However, one Shankar Yadav (P.W. 5), again a co-villager has made startling revelation that he saw the dead body of the deceased in the field of Bhulan Singh in the evening hours of 18.09.2015. Many villagers had assembled at that place including the parents of the deceased. Nobody was talking about the appellant as being the perpetrator of the offence. He has very specifically stated before the Trial Court that there was not even a rumor afloat in the village regarding the hand of the appellant in the occurrence or that the dead body was located at the instance of the appellant.



13. We have examined the deposition of P.Ws. 6 and 7 rather carefully.

14. P.W. 6 had learnt about the deceased having stayed back at the Ghat along with the appellant, in the night of 18.09.2015 only, but did not go to the house of the appellant to inquire. It was only in the next morning that he along with his brother (P.W. 7) proceeded towards the home of the appellant, whom they met on way and who gave the location of the deceased.

15. The manner in which P.W. 6 and P.W. 7 have spoken about the appellant having given direction to them specially with respect to the location of the deceased, it appears that much more has been read into such communication between the appellant and P. Ws. 6 and 7 than what was necessary or justified.

16. Assuming the fact of the P.W.6 and P.W. 7 having met the appellant on way, he might have suggested that it would be better to look for the victim in the field from where she had not returned. Such communication



has unnecessarily been read as the knowledge of the appellant about the presence of the dead body in the field on Bhulan Singh.

17. P.W. 6 has further stated in his cross-examination that on his information, the police party had arrived where his fardbeyan was recorded. The only source of information to P.W.6 as also P.W. 7 about the deceased having been held back by the appellant was Kajal Kumari (P.W. 1). Nobody of the village, not even those who had gone to the Ghat for immersion of the idol, had spoken about the appellant to either P.W. 6 or P.W. 7.

18. It would be highly relevant to first examine the deposition of the Ram Pratap Paswan (P.W. 10), who had recorded the fardbeyan of P.W. 6. The case has been investigated by Santosh Kumar Mandal (P.W. 9).

19. According to P.W. 10, he was posted at Champanagar O.P. on 18.09.2015, when in the same evening, he had heard a rumor that a girl of tender age



has been raped and killed. On receiving such information, he along with the police party proceeded for the place of occurrence but before that, he reached the house of P.W. 6 (the informant). However, he recorded the fardbeyan on 19.09.2015 at 11:20 AM. The inquest also was done at the house of the P.W. 6 at 11:30 AM. During the inquest, he had found both the legs of the deceased burnt. There were burn injuries on hand and face as well. The deceased was wearing a red colored frock and brown colored underwear. He had not found any blood mark on the clothes of the deceased but he had not referred to it in his inquest report. He did not make any reference of any injury on the private parts of the deceased in the inquest report.

20. This fact itself has sent us in doubt, as to the time when the deceased was spotted by P.W. 6, P.W. 7 and other members of the village in the field of Bhulan Singh. If P.W. 10, a local police officer, had learnt about a girl having been raped and killed and had



visited the house of the informant (P.W. 6) only in the night of 18.09.2015, there was no earthly reason for not recording the FIR in the same night. This further causes dent in the prosecution version, especially the deposition of P.W. 6 that the dead body was not found in the night of 18.09.2015, but only in the morning hours of 19.09.2015.

21. There does not appear to be any reason whatsoever for deferring the recording of the fardbeyan and the inquest report.

22. Mr. Bijendra Kumar Singh, the learned Advocate for the appellant has, therefore, laid a lot of stress and emphasis on the fact that there was a time-gap between the dead body being found and the recording of the fardbeyan. There were ample opportunities for P.W. 6 and others to confabulate and put the blame on the appellant, who had some enmity with one of the associates of P.W. 6.



23. There is yet another fact, it has been pointed out to us, which makes the prosecution case highly doubtful. The investigator (P.W. 9) visited the place from where the dead body was brought back to the house of P.W. 6 at about 06:45 PM. He did not find any mark of violence or any burn mark at the place where the deceased is said to have been spotted first by P.W. 6, P.W. 7 and others. The appellant was not found in his house in the night of 19.09.2015. However, he was arrested on 20.09.2015 from his house. His clothes were seized (Ext. 2), which was deposited in the *malkhana*. The same was sent to forensic laboratory on 25.11.2015. The forensic report is Ext. 6 and 6/1.
24. From the report, it appears that the undergarment of the victim/deceased as also of the appellant were sent to the laboratory. A small quantity of blood was detected over small areas in the frock which bore reddish brown stain over a small areas. However, no blood was detected either on the undergarment of the



victim or of the appellant. A separate serological report on the origin and root of blood was submitted by the laboratory. Even the blood grouping could not be determined and the result for the test of blood grouping remained inconclusive.

25. What is distressing to note is that there is no histopathological Report on record suggesting presence of any dead spermatozoa, which has been referred to by the Doctor who had conducted the postmortem report.

26. Dr. Arun Kumar Ojha (P.W. 8) had conducted the postmortem on the deceased at 03:00 PM on 19.09.2015. He had found rigor mortis present in all the limbs. There were bruise marks on the neck. Lacerated injuries were found from the lower end of vagina which continued till the vaginal linings. Superficial burn injuries were also found on the face, left chest and anterior portion of the lower limbs.

27. In the postmortem report (Ext.1) the histopathological examination of the report has been



discussed and it has been recorded that the histo-Pathological examination of the vaginal swab was found to be containing dead spermatozoa and RBC. The cause of death, in the opinion of P.W. 8, was due to injuries referred to above, shock and hemorrhage and also due to asphyxia because of suffocation and pressure on the neck, though the inquest report does not at all talk about any ligature mark over the neck or any injury on the private parts of the deceased.

28. This may not have meant much, but the absence of the histo-Pathological report on record and the disclosure of P.W. 8 in his cross-examination makes the postmortem report highly redolent with suspicion. When P.W. 8 was questioned, he categorically stated before the Trial Court that he missed out on mentioning the case number in the postmortem or about any sign of penetrative sex or even of the hymen being torn.

29. It appears to be rather surprising to us that when the case related to the rape and murder of an eight year old



girl, the first thing which had to be examined by the doctor was the vaginal tear. Apart from this, what has really troubled us that he has denied to have preserved any vaginal swab which could be put to any histopathological test.

30. The postmortem report (Ext. 1), therefore, appears to be a table-work and that also without any application of mind.

31. We seriously deprecate such insensitive approach of P.W. 8 in performing his duty.

32. We say no further on this.

33. With these facts, namely, 1. only P.W. 1 having talked about the appellant having promised to reach the deceased home on his motorcycle; 2. no villager having any idea about the hand of the appellant in the offence and in the killing of the deceased; 3. the I.O. not finding any mark of violence at the place which was suggested to be the one from where the dead body was lifted and brought back on home; 4. P.W. 10 having



known about the occurrence in the night of 18.09.2015 and having visited the house of P.W. 6 in the same night and then recording the fardbeyan only on the next day on 19.09.2015 at 11:20 AM; and 5. the most abstruse meaning derived of the communication of the appellant to P.W. 6 and 7, completely debunks the prosecution version.

34. If these aspects are ignored, the requirement of proving the guilt beyond all reasonable doubts would only to reduced to mere shibboleths and nothing else.

35. We have also examined the evidence of the defence witnesses, who all have admitted that the deceased was raped and killed and that later, an accusation was leveled on the appellant. The appellant had a good moral character. He has a big family to fend. None of those witnesses had seen the appellant accompanying the deceased.

36. Not as an act of victim-shaming but out of sheer curiosity, we tried but could not find any plausible



reason for P.W. 6 and not visiting the house of the appellant in the night of 18.09.2015 after learning from Kajal Kumari P.W. 1 about the appellant. What were P.Ws. 2, 6 and 7 waiting for? This lapse on the part of P.Ws. 2, 6 and 7, therefore, justifies the contention of the appellant that it was only an afterthought and not a statement of fact that it was on the indication of the appellant that the dead body was recovered. The appellant has though given reasons for his false implication in his statement under Section 313 of Cr.P.C. but such statement is too vague to be completely relied upon.

37. Nonetheless, for the reasons noted above, we find no evidence to connect the appellant with the offence, which is so grievous and abhorrent in nature. Equally despicable but would be false implication in a case of this kind, of a close relative of the victim.

38. The appeal is allowed.



39. The judgment and order of conviction and sentence is set aside and the appellant is acquitted of the charges levelled against him.

40. The appellant is in jail for about eight years by now, he is directed to be released forthwith, unless his detention is required in any other case.

41. Let a copy of this judgment be communicated to the Superintendent of concerned jail for record and compliance.

42. The record of this case be also returned to the concerned court below forthwith.

(Ashutosh Kumar, J)

(Nani Tagia, J)

manoj/sunilkr-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.11.2023
Transmission Date	23.11.2023

