

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2653 of 2017

Arising Out of PS. Case No.-27 Year-2016 Thana- DIGHALBANK District- Kishanganj

Badruddin, Son of Arsad Ali resident of Village- Bairbanna, P.S. Dighalbank,
District- Kishanganj.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Amal Kumar Sinha, Advocate
For the Respondent/s : Mrs. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 07-12-2023

1. Learned counsel Mr. Amal Kumar Sinha appearing for the appellant and learned APP Mrs. Anita Kumari Singh for the State are present and they are heard on the merit of this appeal.

2. The instant Criminal Appeal has been filed against the Judgment of Conviction dated 08.06.2017 and Order of Sentence dated 14.06.2017, passed by learned 1st Addl. District & Sessions Judge - Cum- Special Judge POCSO, SC/ST Act, Kishanganj, in Special Case No. 03/2016 arising out of Dighalbank P.S. Case No. 27 of 2016, whereby and whereunder the appellant has been convicted for the offences punishable under Sections 376 and 354(B) of the Indian Penal Code (hereinafter referred to as "IPC") and under Section 18 of the POCSO Act and he has been sentenced to undergo Rigorous Imprisonment for 10 years with a fine of Rs. 20,000/- for the offence punishable under Section 376



of IPC and it has been directed that 50% of the fine amount, after realization, shall be paid to the victim apart from the amount paid to the victim under Section 357A of Cr.P.C. and in default of payment of fine, the appellant has been directed to undergo additional Rigorous Imprisonment for two years. The trial Court further sentenced the appellant to undergo Rigorous Imprisonment for 5 years with a fine of Rs. 5,000/- for the offence punishable under Section 354B of IPC, in default of payment of fine he has been directed to undergo additional Rigorous Imprisonment for six months and he has also been sentenced to undergo 5 years of Rigorous Imprisonment for the offence under Section 18 of the POCSO Act and all the said sentences have been directed to run concurrently by the Trial Court.

3. The prosecution's story in brief is that on 18.04.2016, the informant (hereinafter referred to as "Victim-X"), who is stated to be one of the two victims, was going to a field where her son Robin Soren was working and she was taking food for his son at that time, when she reached in between the villages Dhantola and Thuknabasti, one person came out from a paddy field and started teasing her and when she tried to raise an alarm he closed her mouth and forcibly lifted her, brought her in a wheat field and committed rape on her. Later on when she raised an alarm the



accused (appellant) was caught hold by the workers working nearby fields and one person namely, Lakhiram Hansda, claimed to have identified the appellant as Badruddin. The informant further alleged that the persons who came on hearing her hulla told that some time earlier, the accused had lifted one (Second Victim hereinafter referred to as “Victim Y”) aged about 13 years in between the villages kharitola and Pipla for committing sexual assault on her but on hulla, he fled away after throwing the said victim.

4. With the above allegations the informant (victim-X) recorded her *fardbeyan*, on that basis Dighalbank P.S. Case No. 27/2016 was lodged for the offences punishable under Sections 376, 354A, 354B of IPC, Section 3(1)(xi),(xii) of SC/ST Act and under Section 18 of POCSO Act.

5. After the completion of investigation, police chargesheeted the appellant for the offences under Sections 376, 354A, 354B of IPC, Section 3(1)(xi),(xii), 3(2)(v) of the SC/ST Act and under Section 18 of POCSO Act and thereafter, learned Special Judge took cognizance of the alleged offences.

6. The appellant stood charged for the offences punishable under Sections 376 and 354B of IPC and under



Sections 12 and 18 of the POCSO Act and also charged for the offence punishable under Section 3(1)(xi) of SC/ST Act.

7. As the appellant did not plead guilty of the offences charged, hence he was put on trial.

8. Altogether 15 witnesses were examined by the prosecution and in documentary evidence, the following documents were proved and marked as exhibits:-

Exhibit.1- Signature of Victim-Y on her statement.

Exhibit.2- Medical Examination report of accused.

Exhibit.2/1- Signature of Dr. Sunil Kumar (P.W.10) on the medical report of the accused.

Exhibit.2/2- Signature of Dr. Anwar Hussain on the medical report of accused.

Exhibit.3- The Medical Report of Prosecutrix.

Exhibit.3/1- Signature of Dr. Shabnam Yasmin on the report regarding age of prosecutrix.

Exhibit.4- Receipt given by FSL department.

Exhibit.5- Signature of Victim-X on her *fardbeyan*.

Exhibit.6- Statement of Victim-Y.

Exhibit.7- Injury Report of Victim-X.

Exhibit.8- An endorsement of S.H.O on the *fardbeyan* of Victim-X.



Exhibit.8/1- *Fardbeyan* of victim-X.

9. After the completion of prosecution's evidence, the accused/appellant's statement was recorded and he was given an opportunity to explain the circumstances appearing against him from the prosecution's evidences, which were denied by him and he did not say anything in his defence.

10. The appellant examined one defence witness namely, Dharam Lal Tuddu as D.W.-1.

11. It has been argued by learned counsel for the appellant that the prosecution did not succeed to prove the offence of rape against the appellant beyond reasonable doubt and one person who claimed to have identified the appellant, was not examined by the prosecution and the Medical Examination Report of the victim-X does not suggest that she was raped by this appellant and in respect of the allegation of using criminal force to outrage the modesty of victim-Y, the prosecution's story is completely vague and there are serious contradictions in between the statements of the prosecution witnesses and the victim's clothes, which were sent to FSL for chemical examination, were not produced before the Trial Court nor FSL report was put up before the Trial Court.



12. Learned APP appearing for the State has argued that both the victims fully supported the allegations levelled by them against the convict/appellant in their statements recorded under Section 164 of Cr.P.C. as well as in their Court evidence and both the victims remained firm to their allegations and the accused did not show any reason on the part of the victims to make a false allegation against him and the FIR was lodged without any delay and the doctor concerned who examined the victim-X opined that possibility of the commission of rape could not be ruled out.

13. Heard both the sides, perused the Judgment impugned and evidences available on the case record of Trial Court and also have gone through the appellant's statement.

14. The important facts which are relevant to the alleged offences for which the appellant was charged are as follows:-

(i) The alleged occurrence with victim-X is stated to have taken place on 18.04.2016 at about 9:00 am and at that time, the said victim was going to a field where his son was working, when the victim was on way to the said field and reached near a paddy field, one person, who was later on identified as appellant, started teasing her and when she attempted to raise an alarm, he pressed her mouth and forcefully lifted and threw her in a wheat field and thereafter committed rape on her, after that she cried then



the persons, who were working in nearby fields attempted to catch the accused but he managed to escape.

(ii) Out of the persons who gathered one namely, Lakhiram Hansda claimed to have identified the accused as the appellant.

(iii) Some of the persons, who gathered on hearing hulla of the victim, revealed that just some time before, the accused(appellant) had been taking the victim-Y, aged about 13 years, with bad intention towards a field but he fled away when the victim-Y raised an alarm.

15. From the above facts, two main allegations come out against the appellant. First is that he raped victim-X and second is that he used criminal force on the victim-Y with an intention to outrage her modesty.

16. In respect of the allegation of rape, the victim's evidence and the medical expert's opinion are very important and relevant in this matter. As per *fardbeyan* of the victim-X, the appellant managed to escape when the persons working in nearby fields gathered on hearing the cry of the victim, out of them one namely, Lakhiram Hansda claimed to have identified the accused as being the appellant. But the prosecution failed to produce the said person. The victim-X did not reveal the names of the persons,



except one Lakhiram Hansda, who are stated to have gathered at the place of occurrence and in this regard, victim's statement in her *fardbeyan* remained vague. The victim-X alleged in her *fardbeyan* that the accused/appellant forcefully lifted her and after that pushed her in a wheat field and thereafter, committed rape on her. In the light of this allegation, the alleged offence of rape was committed in a wheat field but the said victim deposed before the Trial Court that the occurrence of rape was committed with her in a paddy field and the said contradiction with regard to the place of occurrence in respect of the incident of rape with victim-X creates a serious doubt in the first allegation of the prosecution.

17. The alleged occurrence of rape with victim-X is stated to have taken place on 18.04.2016. The said victim was medically examined on the same day. P.W.-13 Dr. Shabnam Yashmin who examined the victim-X, deposed that she did not find any external or internal injury on the private parts of the victim-X and also did not find any stain of foreign body on the clothes of the said victim and spermatozoa was also not found in vaginal swab. These medical findings given by P.W.13 after the examination of victim-X do not suggest the commission of rape with her, though a contusion on lower lip and a small laceration on inner side of lower lip were found on the body of the victim but



the same are not sufficient to draw the inference that the victim was sexually assaulted in the form of rape by the appellant. The most important thing is that as per the prosecution, the S.H.O concerned, who did preliminary investigation and was examined as P.W.12, deposed that the clothes of the accused and victim were sent to FSL for chemical examination after getting the necessary permission from the Trial Court. In this regard the prosecution also proved the receipt given by the FSL department in respect of receiving the said articles which was marked as Exhibit-4. But during trial, the prosecution failed to submit the FSL report with regard to these articles and even the said articles were not produced before the Trial Court.

18. P.W.15(Investigating Officer), who inspected the place of occurrence where the alleged offence of rape is said to have been committed with victim-X, gave the description of the place of occurrence in his evidence before the Trial Court but the same does not show that he found any incriminating material as to suggest the commission of the offence of rape with victim-X and according to his statement, there was paddy crop at the place of occurrence while as per *fardbeyan* of the victim-X, the appellant committed rape with her in a wheat field.



19. The above-discussed circumstances appearing from the prosecution's evidences go against the prosecution and create a serious doubt in the allegation of rape made by the victim-X against the appellant, in the opinion of this Court, the conclusion of the Trial Court in holding the appellant guilty of the offence punishable under Section 376 of IPC is not proper and legal and the same requires interference by this Court.

20. So far as the second allegation made by the victim-Y is concerned, in this regard her own evidence is very important and relevant. The victim-Y has been examined as P.W.6. She deposed that the alleged occurrence took place about one year ago at about 10:30 AM, at that time she was returning alone from a coaching center and going to her home on foot then suddenly the accused came and lifted her and when she cried, he pushed her in a pit and thereafter, fled away in a maize field. These statements made by victim-Y are important and corroborative to the allegation made by the prosecution against the appellant and also relevant to the alleged offence punishable under Section 354B of IPC for which the appellant has been convicted. In respect of said allegation, the evidence of P.W.7 is also important as he is stated to be an eye witness of the said occurrence and he deposed that on the alleged day and time of occurrence he was returning from a coaching



center and going towards his house and at that time victim-Y was also going on foot towards her home and when she cried, he rushed to her and saw one person in fleeing position. The said witness identified the appellant being present at the time of recording his deposition before the Trial Court. Accordingly, the evidence of P.W.7 is also supportive to the allegation made by victim-Y.

21. P.W.15 who investigated the case, deposed in the cross-examination that he inspected both the places of occurrence and he found some crushed plants of paddy crop at the place of occurrence. The said place is stated to be the place of occurrence concerned to the victim-Y. The evidence of Investigating Officer goes in favour of the prosecution in respect of the allegation levelled by victim-Y. Other witnesses who claimed to have got the knowledge of the incident which took place with victim-Y, gave relevant evidence and supported the prosecution's case. From the cross-examination of these witnesses including victim-Y and Investigating Officer, the appellant did not succeed to elicit any fact to create a serious doubt in the allegation levelled by the victim-Y against him. As such the prosecution succeeded to prove the alleged offences punishable under Section 354B of IPC and Section 18 of POCSO Act. Accordingly, this Court finds the



convicting Trial Court's conclusion with regard to both the said offences to be proper and correct and finds no strong reason to interfere in the said conclusion.

22. In the result, the impugned judgment of conviction and order of sentence **are hereby set aside in respect of the offence of Section 376 of IPC** for which the appellant has been convicted and sentenced but appellant's conviction and sentence for the offences punishable under Section 354B of IPC and under Section 18 of POCSO Act are hereby confirmed.

23. As the appellant has been languishing in jail since 19.04.2016 and he has **served more than six years** of Rigorous Imprisonment and the sentences awarded upon him by the Trial Court for the offences punishable under Section 354B of IPC is five years with a fine of Rs. 5,000/- and in default of payment of fine he was directed to undergo an additional Rigorous Imprisonment for six months and he was also sentenced to undergo five years of Rigorous Imprisonment for the offence punishable under Section 18 of POCSO Act and both the sentences were directed to run concurrently, so in the said situation the appellant is now entitled to be **released from jail forthwith on account of having served the complete sentence for the offences for which his conviction has been upheld.**



24. As such, the instant appeal stands **allowed partly**.
25. Let the appellant be released at once, if his custody is not required in any other case.
26. Let the copy of the judgment be sent to the concerned Court and Jail Superintendent for needful and immediate compliance of this judgment.
27. Let the LCR be sent back to the Trial Court forthwith.

(Shailendra Singh, J)

Maynaz/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.12.2023
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