

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.119 of 2023

Arising Out of PS. Case No.-11 Year-2020 Thana- MAHILA P.S. District- Vaishali

=====

Pramod Kumar Thakur @ Pradhuman Kumar @ Pradhuman, S/o Satish
Thakur @ Chattish Thakur, R/o Village- Jahangirpur Sham, P.S.- Desari
(Chandpura O.P.), Distt- Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Mukesh Kumar Singh, Advocate Mr. Kumar Samarjeet Singh, Advocate Mr. Sashi Wats, Advocate
For the Respondent/s	:	Mr. Manish Kumar No2, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 14-05-2024

We have heard the learned counsel for the

parties.

2. The appellant has been convicted under

Sections 376(3) and 506 of the Indian Penal Code,

Section 4(2) of the POCSO Act, 2012 *vide* judgment

dated 23.09.2022 passed by the learned Additional



Sessions Judge-VI-cum-Special Judge, POCSO, Vaishali at Hajipur in POCSO Gr. No. 12 of 2020, arising out of Mahila P.S. Case No. 11 of 2020. By order dated 13.10.2022, he has been sentenced to undergo R.I. for twenty years, to pay a fine of Rs. 15,000/- and in default of payment of fine, to further suffer R.I. for six months under Section 376(3) of the IPC; R.I. for twenty years, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer R.I. for four months under Section 4(2) of the POCSO Act, 2012 and S.I. for one year under Section 506 of the IPC.

3. The sentences have been ordered to run concurrently.

4. The victim, a 13 year old girl, is said to have been raped by the appellant, who is her step-brother.

5. The case was lodged by the mother of the victim (P.W. 1), who had lodged a written report on 22.03.2020 alleging that on 20.03.2020, at about 4 o'clock in the morning, her 13 year old daughter had



come out of her room to go to the toilet. That time, the appellant, who is her step-cousin, gagged her and took her near the bathroom of one Vikash Thakur, another family member, and raped her. Later, the victim was brought back home by the appellant. He had threatened the victim of dire consequences, in case she narrated about the occurrence to anyone else. The victim did not say anything out of fear but appeared very distraught to her mother. When she further asked her daughter, she narrated about the occurrence. The appellant was accosted by P.W. 1 when, in the first instance, he denied to have committed any such offence and later threatened that he would not care less even if the case was reported.

6. On the basis of the afore-noted written report, Hajipur Mahila P.S. Case No. 11 of 2020, dated 22.03.2020 was registered for investigation under Sections 504, 506, 376(2)(i) of the IPC and Section 4 of the POCSO Act, 2012.



7. The informant/mother of the victim has though supported the prosecution case at the Trial, but her deposition does not inspire confidence. She has narrated the same story before the Trial Court but with some difference.

8. In her examination-in-chief, she has stated that the victim was crying after the incident. When she asked her about the reason for her not taking food for the whole day, the victim relented and on the next day, spoke about the occurrence. While this event had happened, her husband (father of the victim) was away on duty.

9. Early in the morning, P.W. 1 went to ask the mother and brother of the appellant when it was denied and a threatening also was given. Thereafter, P.W. 1 claims to have come to Chandpura O.P. The police personnel at Chandpura O.P. had arrested the appellant and had also facilitated the victim and her husband to reach the Mahila Police Station. The Officer-in-Charge of



Mahila Police Station was told about the occurrence, which was reduced in writing and signed by her, her husband and the victim (Ext.- 1).

10. Thereafter, the victim was examined medically in the Sadar Hospital. The medical examination of the victim was done with the consent of P.W. 1. P.W. 1 had special dislike for the brother of the appellant about whom she narrated before the Trial Court that he is very abusive and after the occurrence, he had been threatening the family of serious consequences.

11. In her cross-examination, she has admitted that her husband (father of the victim) and the father of the appellant are step-brothers from the same father but with two mothers. There have been a dispute in the family about partition of the family property, which had but settled by the time the occurrence had taken place.

12. It further appeared from her cross-examination that the courtyards of the houses of the



victim and the appellant were demarcated and the entry point for both the houses were different. However, the houses were situated contiguous to each other. At the time of the occurrence, everyone was fast asleep. However, the victim, before coming out of her room to go to the toilet, had informed her grand-mother (P.W. 4) about her going to the toilet.

13. Since the victim was gagged before being taken away and being raped, therefore, nobody heard her shrieks. She met the victim only after half an hour of the occurrence. At that time, the victim did not state anything to her but kept on crying. With lots of persuasion, she could extract the afore-noted information about rape from the victim.

14. The case, however, was lodged on the next day, even though Chandpura P.S. was at a distance of about half a kilometer. The reason for not lodging the case immediately was the absence of her husband.

15. The medical examination of the victim



had taken place on 21.03.2020.

16. She has denied the suggestion to her that because of the dispute between the father of the appellant and the father of the victim, a false case has been instituted against the appellant.

17. Similarly, the victim (P.W. 2) also supported the prosecution case. She was found to be very traumatized by the Trial Court. After she was consoled by the Trial Court, she gave her statement, narrating about the family tree and raising an accusing finger at the appellant. The appellant, according to her, had three other brothers. After threatening, he reached her home, whereafter she told about the occurrence to her parents on the next day.

18. When specifically asked by the Trial Court as to why she did not report the matter immediately to her parents, she disclosed that she was under real fear because of the threat given by the appellant.



19. When this occurrence had taken place, the victim claims that she was only 12 years of age. She was examined medically and also gave her statement under Section 164 of the Cr.P.C. (Ext.- 3).

20. For some reason, a question was asked from her by the Court as to whether the day on which the occurrence had taken place, birthday celebration of the brother of the appellant was also going on in the house; to which she replied in the positive and said that because loud music was blaring, therefore, nobody could hear her shrieks. She had bled from her vagina and the clothes that she was wearing also has smears of blood.

21. She has further stated before the Trial Court that there is one boundary wall between the houses of the victim and the appellant. She claimed ignorance about the dispute between her father and the father of the appellant with respect to property. She repeated before the Trial Court that she had shouted for help but it went unheard and that she had met her



mother after about one hour of the occurrence. She also denied that because of the dispute for partition of the family property, this false case has been instituted.

22. The father of the victim (P.W. 3) had seen that on 20.03.2020, the victim was not in a good state of health and that she looked very morose. He had told his wife to look after his daughter and left for his duty. He was told about the occurrence only in the night of 21.03.2020 by his wife that the appellant had raped his daughter. He went to the house of his step-brother on the next day but did not get a good response. It was only thereafter that the case was lodged and the appellant was arrested.

23. After the occurrence and the matter having been reported, the family members of the appellant had threatened for about six to seven times and on 26.03.2021, he was assaulted, as a result of which he became injured and had to get himself treated at Desari Hospital and thereafter at Sadar Hospital,



Hajipur. Because of such later occurrence, the beat police/patrolling police often visited the house of P.W. 3.

24. The father of the appellant and he are step-brothers. After his father retired from service, the money which he got by way of pension and gratuity was appropriated by the father of the appellant. With respect to the occurrence, he has stated that the cries of his daughter could not be heard by anybody. He did not know whether after the occurrence, the victim took bath and changed her clothes. He was also not sure whether the clothes belonging to the victim were given to the Investigator. He had no idea as to when had his wife learnt about the occurrence.

25. The grand-mother of the victim (P.W. 4) has also supported the prosecution case, but it appears that in her cross-examination, she did not deny that the two families always fought amongst themselves for apportioning the monetary benefits of her retired husband.



26. One Jaimala Devi (P.W. 5) came to know about the occurrence from the mother of the victim. She also is somehow related to the victim's family.

27. The dental age of the victim was assessed by P.W. 6/Dr. Priyanka, who found the dental age to be 15 to 16 years. The radiological age of the victim was ascertained by P.W. 7/Dr. Brajesh Kumar Singh, who found the victim to be 16 years of age. The lady Doctor/Vinita Kumar before whom the victim was examined had died. The medical report was in her handwriting, which P.W. 7 identified (Ext.- 7). Since he had worked Vinita Kumar for many years, he was in a position to identify her handwriting.

28. In cross-examination, very interestingly, he has reported that he did not see any tear in the hymen.

29. Dr. Suman Kumari Keshri (P.W. 8) also identified and confirmed the report of Vinita Kumar, the



lady Doctor who was the Medical Officer. Dr. Pranay Punj (P.W. 9) had examined the appellant on 23.03.2020. The penile swab on microscopic examination did not evince any trace of motile or non-motile spermatozoa. No recent sexual act could be confirmed by his medical examination.

30. Shashi Prabha Mani (P.W. 10), the Investigator had registered the FIR on 22.03.2020 on the written report by P.W. 1 and had taken over the investigation of the case. She had recorded the further statement of P.W. 1 and of the victim. She had also ensured the medical examination of the appellant. She recounted that when she recorded the statement of P.W. 1, she had stated that the victim was crying but did not answer to her question.

31. The father of the victim also claimed before her that he knew about the occurrence only from his wife (P.W. 1). The neighbours and the family members of the appellant were never questioned by her.



She has but denied the suggestion that she had done only paper work in the name of investigation.

32. The Trial Court, after having examined ten witnesses, referred to above, during the Trial, also recorded the deposition of four of the defence witnesses, all of whom were known to the parties from before.

33. Raju Kumar Ray (D.W. 1) confirmed about the strained relationship between the two families because of the dispute over distribution of the grandfather's post-retiral money. He knew the families of the parties and also knew that nothing of the kind which was reported against the appellant had ever happened.

34. Similarly, Raghuvarsh Rai (D.W. 2) knew that P.W. 1 had threatened the father of the appellant that she would ensure that the entire family lands in jail.

35. Ram Babu Ray (D.W. 3) had heard some *hulla* and when wanted to know about the reason, the father of the victim only later told that his daughter



was raped. When Ram Babu Ray wanted to see the victim, the father of the victim evaded the question.

36. Similarly, Vijay Ray (D.W. 4) denied that any such occurrence had taken place.

37. We have also noted from the statement recorded under Section 164 of the Cr.P.C. of the victim that in the night of the occurrence, the birthday celebrations of the brother of the appellant was continuing and because of DJ and loud music, her cries could not be heard by anybody.

38. What has sent us doubting about the correctness of the prosecution case is that the occurrence is said to have taken place at about 4 o'clock in the morning of 20.03.2020. At such an unearthly hour, no person, either overcome by lust or by revenge would enter the house of another. Here, the appellant is none else but the step-cousin of the victim. The appellant is himself in his teens. The family is at loggerheads for the distribution of the post-retiral dues



of the grand-father of the appellant and the victim.

39. Though the houses are separate, but one boundary wall separates the courtyards of the houses. There is no evidence of any loud music blaring on the night of the occurrence. There are instances of tergiversation by the witnesses with respect to the manner in which the victim reacted to the act of rape. The victim came back after half an hour and because she was looking morose, she was questioned by her mother. However, some of the witnesses spoke about the victim crying after the incident, which attracted the attention of the other family members.

40. In any view of the matter, if the fact of rape was known by the morning of 20.03.2020, there was no reason to wait for two days and lodge the FIR on 22.03.2020.

41. The explanation given by P.W. 1, the mother of the victim, that because the father of the victim had gone off to duty, there was a delay in lodging



of this case, does not appear to be correct from the deposition of the father of the victim, who has stated before the Trial Court that he saw the victim very sad on 20.03.2020. Before going to his duty, he had asked his wife (P.W. 1) to look after the girl. He came back on 20th night but was not told about any such incident. It was only when he came back home in the night of 21.03.2020 that he was informed about the occurrence. It was only thereafter that the case was lodged.

42. This fact coupled with the medical examination of the victim where no tear in the hymen was detected and no motile or non-motile spermatozoa present in the penile swab of the appellant, it is rather difficult to accept the version of the victim and her mother to be correct.

43. The background of dispute, the fathers of the appellant and the victim being step-brothers from the same father and a dispute with respect to distribution of post-retiral benefits of the grand-father of



the parties who had retired recently, the narrative only presents a picture that a young girl of a family has been set up to wreak vengeance on the other part of the family by involving a young boy of that house in such a heinous case with such a stringent punishment.

44. We are conscious of the fact that for an allegation of rape against a minor, no corroboration may be required if the version of the victim is trustworthy. But in the present case, though an attempt has been made to project a consistent version about the victim having been raped by the appellant in the morning hours of 20.03.2020, but the truth does not appear to be what meets the eye.

45. In the first instance, it appears to be rather improbable that the victim for going to toilet in her own house would wake up her grand-mother; secondly, it also appears to be doubtful that the appellant would scale over the boundary wall and be in the waiting for the victim to appear from her bedroom so



that he could gag and rape her.

46. The victim, perhaps, was not taken anywhere. It is the case of the prosecution that the appellant reached the victim to her home after the incident. If the victim would have cried during the occurrence, she would also have raised alarm when the appellant had accompanied her to her house. She has done nothing of that kind.

47. Thus the delay in lodging the FIR, the falsity in the narrative set up by the prosecution, especially, the sequence of events, the victim trying to cry and raise alarm but could not be heard because she was gagged and the blaring music and the appellant choosing such an unearthly hour to rape his own cousin, the prosecution case becomes very suspicious.

48. Coupled with this, not even a tear in the hymen and no evidence of any recent sexual act by the appellant further weakens the prosecution case. It clearly appears that the father of the appellant was



threatened by the mother of the victim sometimes prior to the occurrence and there was an irresolvable dispute between the two families.

49. In this background, the allegation of rape of the victim by her step-brother does not appear to be probable.

50. For the afore-noted reasons and also taking into account that even the age of the victim was not attempted to be ascertained confirmed by the Trial Court for it to assume the jurisdiction as the Special Court for POCSO cases, the prosecution presents a story with many loopholes.

51. We are constrained, thus, to give benefit of doubt to the appellant and acquit him.

52. For the reasons afore-noted, the judgment is set aside and the appellant is acquitted of all the charges levelled against him.

53. The appeal stands allowed.

54. Since the appellant is in jail for more



than four years, he is directed to be released forthwith from jail, if not detained or wanted in any other case.

55. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

56. The records of this case be returned to the Trial Court forthwith.

57. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Sauravkrsinha/
Sunilkumar-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.05.2024
Transmission Date	16.05.2024

