

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.354 of 2023

Arising Out of PS. Case No.-51 Year-2014 Thana- MAHILA P.S. District- Muzaffarpur

Sangita Kumari @ Sangita Sahani, Daughter of Ramadhar Sahani @ Ram Adhar Sahani, Resident of Village- Khajuri, P.S.- Gaighat, District- Muzaffarpur.

... .. Appellant

Versus

1. The State of Bihar
2. Satrugan Rai, Son of Saryug Rai, Resident of Village- Khajuri, P.S.- Gaighat, District- Muzaffarpur.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Yugal Kishore, Advocate
For the State	:	Mr. Sujit Kumar Singh, Addl PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 21-11-2024

Heard Mr. Yugal Kishore, learned counsel for the appellant and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State.

2. This appeal against acquittal has been preferred by the informant-appellant for setting aside the judgment dated 14.02.2023 (hereinafter referred to as the 'impugned judgment') passed by the learned 7th Additional Sessions Judge-cum-Special Judge, POCSO (W), Muzaffarpur (hereinafter referred to as the 'learned trial court') in G.R. No. 26 of 2016 arising out of Mahila P.S. Case No. 51 of 2014. By the impugned judgment, the learned



trial court has been pleased to acquit respondent no. 2 of the charges under Section 376(DA) of the Indian Penal Code (in short 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act').

Prosecution Case

3. As per the prosecution story, the informant-victim (PW-3) submitted written application (Exhibit 'P-1') dated 20.06.2014 wherein she alleged that on 09.06.2014 when she was sleeping in her house, the accused persons, namely, (1) Ramadhar Sahni and (2) Satrughan Rai (respondent no. 2) both came at her house, took her to Fakiradih Brick Kiln, administered her intoxicating injection and one-by-one both have committed rape upon her and when she protested then they threatened to kill her. Thereafter, both the accused persons left her there in unconscious condition. The informant alleged that when she gained her consciousness in the morning, she returned to her home and told about the incident. In the meantime, her parents were searching for her. In the village, there was a panchayat but the accused persons did not agree with the Panchayat.

4. On the basis of the written application, a formal FIR being Mahila P.S. Case No. 51 of 2014 dated 20.06.2014 was registered under Sections 376/34 IPC against (1) Ramadhar Sahni



and (2) Satrugan Rai. Learned Chief Judicial Magistrate, Muzaffarpur having noticed that on the date of occurrence the victim was minor, transferred the records vide order dated 28.03.2016 to the court of learned Special Judge, POCSO Act. After investigation, police submitted chargesheet bearing no. 93 of 2021 dated 05.12.2021 under Section 376/34 IPC against Satrugan Rai (respondent no. 2) keeping the investigation pending against Ramadhar Sahni. Learned Special Judge on the basis of the chargesheet and medical report of the victim which suggested her age between 15-16 years vide order dated 08.12.2021, took cognizance of the offences under Section 376/34 IPC and Section 4 of the POCSO Act. Charges were explained to the appellant which he denied and claimed to be tried. Accordingly, on 06.07.2022, learned Special Judge framed the charges against Shatrughan Rai under Section 376(DA) IPC and Section 6 of the POCSO Act.

5. In course of trial, the prosecution examined as many as eight witnesses and exhibited several documents. The defence has also produced two witnesses and exhibited three exhibits to strengthen it's case. The list of the prosecution witnesses as well as defence witnesses and documents exhibits on behalf of the prosecution and defence are mentioned hereunder in tabular form:-



List of Prosecution witnesses

PW-1	Sister of victim
PW-2	Father of victim
PW-3	Victim
PW-4	Ramnath Sahni
PW-5	Jagarnath Sah
PW-6	Malti Kumari, I.O.
PW-7	Dr. Mukul Kumar
PW-8	Dr. Meena Mishra

List of Defence witnesses

DW-1	Ramanand Kumar
DW-2	Ashok Kumar Thakur

List of Exhibits on behalf of the Prosecution

Exhibit P-1	Fardbeyan
Exhibit P-2	164 Statement
Exhibit P-3	Chargesheet
Exhibit P-4	Radiological Report
Exhibit P-5	Medical Report
Exhibit P-6	Supplementary medical report

List of Exhibits on behalf of Defence

Exhibit D-1	Photocopy of Final Form of Gaighat P.S. Case No. 188 of 2012.
Exhibit D-2	Photocopy of FIR of Gaighat P.S. Case No. 186 of 2012.
Exhibit D-3	Sale Deed dated 14.06.2016 in favor of father of the victim.



Findings of the Learned Trial Court

6. Learned trial court after analysing the evidences on the record found that it is the case of the prosecution that in the night, the accused persons came on a motorcycle and took away the victim from the veranda of the house where she was sleeping with her sister and the two children of her sister. Learned trial court observed that it is unbelievable that nobody in the family woke up even after hearing the cry of the victim. Learned trial court found that the father of the victim has deposed that while he was searching her daughter, he was told by a lady that two persons have taken her away on motorcycle but who was the said lady has not been disclosed by him. Learned trial court observed that even though the lady had seen the victim girl being taken away but she did not raise any hue and cry which creates a doubt with regard to the statement of the father of the victim. Learned trial court found that the persons who brought the victim to the house after the occurrence have not been examined and produced as witnesses, they are said to be the '*Jija*' and 'maternal uncle' of the victim.

7. Learned trial court has found contradictions between the statements of the victim recorded under Section 164 Cr.PC and those in her deposition. The victim in her examination-in-chief has stated that she shouted when she was administered the injection



but in the cross-examination, she has stated that the injection was administered on way whereas in her statement under Section 164 Cr.PC, she has stated that she was given injection at the Fakiradih Brick Kiln. Further, the victim stated in her statement under Section 164 Cr.PC that in the morning, she regained consciousness and came back to her house whereas in her deposition, she has stated that she came to her house in unconscious condition and her father has further stated that he had called a doctor from the village who treated her and then she got consciousness.

8. Learned trial court found that the victim has stated in her deposition in paragraph '19' that she made a call from the mobile of the accused on the mobile of her father at the time of occurrence itself but the father of the victim has not disclosed any such fact. Learned trial court observed that it is not explained as to why the father of the victim did not disclose this fact to his son-in-law and brother-in-law immediately or himself visited the place of occurrence in the night itself.

9. From the medical examination of the victim, the learned trial court found that the victim was examined within 36 hours of the incident but the medical report (Exhibit 'P-5') does not show any sign of sexual assault or any kind of mark of violence which creates a doubt over the prosecution story as the



victim has alleged that the occurrence took place on a brick kiln. Learned trial court found that the I.O. of this case who has been examined as PW-6 in this case has stated that she has recorded statements of the two independent witnesses who had told her that there is a land dispute between the parties. The victim had eloped with her brother-in-law's cousin, namely, Kunkun Sahni and later, married him. The I.O. has further stated in her cross-examination that no evidence of rape against Satrugan Rai was found.

10. Learned trial court opined that it is not safe to convict the accused-respondent no. 2 on the sole testimony of the victim in this case. Learned trial court held that the prosecution has miserably failed to prove the fundamental facts of this case beyond all reasonable doubt. Accordingly, learned trial court acquitted the accused-respondent no. 2 Satrugan Rai of the charges leveled against him.

Submissions on behalf of the Appellant

11. Learned counsel for the appellant has assailed the impugned judgment saying that the judgment is based on mere conjectures and surmises and is against the materials available on the record. Learned trial court failed to consider and appreciate the examination-in-chief and cross-examination of the prosecution witnesses who have categorically stated that the occurrence was



committed by respondent no. 2 along with other accused. Learned counsel submits that the victim has stated that the accused had given her injection and had committed gang rape with her but this evidence of the victim has not been appreciated by the learned trial court.

12. Learned counsel submits that even as the Investigating Officer (PW-6) has stated that the independent witnesses had stated before her that both the parties have land dispute, that alone cannot be taken as a ground to presume that the victim girl would falsely implicate respondent no. 2 to settle a score in connection with the said land dispute.

13. Learned counsel submits that the prosecution has duly proved the manner of occurrence in this case, however, learned trial court has completely erred in appreciating the entire evidences on the record.

Submissions of the State

14. On the other hand, learned Additional Public Prosecutor for the State has defended the impugned judgment. It is submitted that the independent witnesses, namely, PW-4 and PW-5 have not supported the prosecution case. According to him, even the Investigating Officer (PW-6) has not supported the prosecution case and it has come in evidence of the Investigating Officer (PW-



6) that the independent witnesses told her that there is a land dispute between the parties. She has further stated that the victim had eloped with brother-in-law's cousin and later married him. In paragraph '6' of her deposition, PW-6 has stated that no evidence was found to show that Shatrughan Rai (respondent no. 2) had raped the victim. She has stated that she had declared the incident as true on the basis of statement of the victim. Learned Addl.PP submits that the learned trial court has rightly appreciated the entire evidences on the record and recorded a finding that in this case, the most important witness is the victim herself who has been examined as PW-3 by the prosecution. The learned trial court has scrutinised the evidence of the prosecutrix and considered as to whether it is safe to convict the accused on the solitary evidence of the prosecutrix in this case. The learned trial court reached to a negative answer after recording reasons in paragraph '9' of the impugned judgment.

15. Learned Additional Public Prosecutor submits that the learned trial court has held that the story propounded by the prosecution is based on the premise of the deposition of the victim but the same crumbles like a house of cards.

16. In these circumstances, it is submitted that the principles governing exercise of appellate jurisdiction while



dealing with an appeal against acquittal under Section 378 CrPC would come to rescue of respondent no. 2. Reliance has been placed in this regard on the judgment of the Hon'ble Supreme Court in the case of **H.D. Sundara and Others versus State of Karnataka** reported in **(2023) 9 SCC 581** (paragraph '8').

17. On the strength of the aforementioned submissions, learned Additional Public Prosecutor would submit that no interference is required with the impugned judgment of the learned trial court.

Consideration

18. Having heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also on a bare perusal of the evidences, we find that the prosecution story has not found support from the independent witnesses (PW-4 and PW-5) and the Investigating Officer (PW-6). The victim girl alleged that while she was sleeping with her elder sister and her two children in the veranda of her house on 19.06.2014 at about 12 O'Clock in night, she was lifted away by two persons, she cried and shouted then they administered an injection as a result whereof she became unconscious. Thereafter, she was taken to a brick kiln in Fakiradih where Satrugan Rai and Ramadhar Sahni committed rape on her, she again cried and requested them to leave her but they did not



stop and they administered injection whereafter she became unconscious. She has stated that when she regained her consciousness, she found herself at her home then she told the entire story to her mother, father and sister, thereafter they along with some co-villagers went to Gayghat Police Station and registered the case. In her cross-examination, the victim (PW-3) has stated that at the time of occurrence, when Satrugan Rai and Ramadhar Sahni forcibly lifted her, Satrugan Rai gagged her mouth and took her away on a bike. On way, he administered injection. This Court finds that while in her examination-in-chief, PW-3 has stated that when the two persons came and lifted her from the veranda of her house, she had cried and shouted, she was sleeping with her sister and her two children but it is difficult to believe that neither her sister nor the two children who were sleeping with her got awaken at the time of occurrence and nobody had seen the accused persons taking away the victim girl forcibly. Again, it appears that in her examination-in-chief, she has stated that when she shouted, she was administered the injection but in the cross-examination, she has stated that the injection was administered on way. In her further cross-examination, she has stated that she was administered injection on the back, therefore, it is crystal clear that at the time she was allegedly forcibly lifted



from the veranda of her house, she was fully conscious and was in a position to shout and according to her, she had also shouted but nobody had come to her rescue. Her father was also sleeping in the house only.

19. In paragraph '19' of her deposition, the victim has stated that when she regained consciousness, her sister told her that her '*Jijaji*' and '*Mama*' had brought her home. The name of '*Jijaji*' is Vinay Sahni who has not been examined. Mama of the victim is Jagannath Sahni, he has also not been examined. PW-3 has stated in the same paragraph of her deposition that she had herself given a call to her father on his mobile by using the mobile of the accused at the time of occurrence. She has stated that she had secretly called her father. The statement of the victim (PW-3), according to this Court is highly doubtful and it would lead this Court to believe that the victim (PW-3) might have been in the company of the accused but in the circumstances narrated by her in her examination-in-chief, it cannot be believed that she would have been in a position to use the mobile of the accused and make a call to her father, that too at the time of occurrence itself. This is highly improbable.

20. The father of the victim has been examined in this case as PW-2. In his examination-in-chief, he has stated that when



his elder daughter came on the roof of the house at about 12'O Clock in the night and informed him that her younger sister is not there on the bed, he went downstairs and found that his daughter was not on her bed then he started searching her on the road where he met a woman walking there. Who was this woman is still not known. PW-2 has further stated that he asked the same woman as to whether she had seen her daughter then she told him that one girl has been taken away by two persons on a bike. PW-2 has not stated that the victim (PW-3) had given him any call on his mobile. He has stated that he asked his elder daughter to call her husband as he would have helped him in searching out the victim girl. His son-in-law came at 01:30 AM at night and went in search of the victim with Jagarnath Sahni, the brother-in-law of PW-2. In the morning, at 07:00-08:00 AM, his son-in-law and Jagarnath Sahni came with the victim girl, at that time, she was lying in unconscious condition. PW-2 claims that he called a Doctor from the village who treated the victim whereafter the victim regained her consciousness after four hours. This Court finds that the said Doctor of the village has not been examined. As stated above, the son-in-law and brother-in-law of PW-2 have also not deposed in support of the prosecution case.



21. One Ramnath Sahni (PW-4) is an independent witness in this case who has stated in his examination-in-chief that at about 11:30 PM in the night, he reached the house of Ramadhar Sahni where he heard that one girl has been kidnapped. She was not found in the night. The girl came back at 08:00 AM, at that time, she was unconscious then this witness and others inquired from her, she told that she was raped at *Fakiradih bhatta* and named the accused persons.

22. Jagarnath Rai (PW-5) is an independent witness who has stated in his examination-in-chief that in the night, he heard a hulla that somebody has lifted away the victim girl, in the morning she came back then this witness came to know that the '*Mausera Bhai*' of the '*Jija*' of the victim, namely, Kunkun Sahni had taken her away. This witness has further stated that in the said rumor, case was lodged against the accused persons. Even as this witness has not supported the prosecution case, he has not been declared hostile by the prosecution. The witness has been cross-examined on behalf of the accused. In his cross-examination, he has stated that because of land dispute, family of the victim girl had falsely implicated the accused persons. He has stated that the brother of the '*Jija*' of the victim had taken her away. The victim had married to the same boy with whom she had gone even as the said boy was



already married earlier. In paragraph '4' of his deposition, this witness has stated that the entire village knew that because of land dispute, the accused persons have been falsely implicated.

23. Malti Kumari (PW-6) is the Investigating Officer of this case. She had recorded statement of the independent witnesses and had submitted the chargesheet which she has proved as Exhibit 'P-3'. In her cross-examination, PW-6 has stated that independent witness had stated before her that both the parties have land dispute. The victim girl had fled away with Kunkun Sahni and later on, married him. PW-6 has further stated that no evidence could be found with regard to the allegation of rape against Satrugan Rai. She has stated that she had submitted a chargesheet on the basis of the statement of the victim girl.

24. On the basis of the statement of the independent witnesses and the I.O. of this case, it is crystal clear that the manner of occurrence as alleged by the victim has not been supported by these witnesses. The fact that the victim girl was traced by her '*Jija*' and '*Mama*' and she was brought to her house in unconscious condition where she was treated by a doctor of the village had not been proved by bringing cogent materials on the record. These witnesses who would have been important to prove these facts have not been examined in course of trial.



25. Dr. Mukul Kumar (PW-7) had examined the victim girl at 21.06.2014. He was posted as radiologist at Sadar Hospital, Muzaffarpur. From his examination-in-chief, it appears that the victim girl was first taken to a lady doctor for her medical examination who referred her to PW-7 for conducting X-ray examination for the purpose of determination of age of the victim. PW-7 conducted the test to determine the age of the victim and opined that according to clinical and radiological report, the age of the victim was between 15-16 years. This Court finds that so far as the age of the victim is concerned, the learned trial court has also concluded that there is not much dispute on the age.

26. Dr. Meena Mishra (PW-8) is the Lady Doctor who has stated in her examination-in-chief that she had examined the victim on 21.06.2014. She was brought by ASI Radha Kumari and Constable Mina Devi. PW-8 examined her and found that the girl is conscious, cooperative, her gait is normal and she has no complain. No mark of injury was found over face or extremities (external part of the body). No mark of injury was found on her waist and abdomen area. No mark of injury has been seen. No abnormal discharge or bleeding was found. Hymen was ruptured, old tag of tissue seen. This PW-8 has proved her handwriting and signature on the medical report which has been marked Exhibit 'P-



5'. This Doctor has also proved her supplementary report as Exhibit 'P-6' as per which, spermatozoa was not found. In cross-examination, PW-8 has disclosed that the victim did not disclose about giving any injection at the time of medical examination. PW-8 has further stated that old ruptured does not mean that she has not undergone sexual assault.

27. From the deposition of PW-8, it is crystal clear that no mark of injury was found on any part of the body of the victim (PW-3). It is to be remembered that PW-3 has stated in paragraph '18' of her deposition that the occurrence of rape had taken place on the land of brick kiln where brick and concrete were lying. She claimed in her deposition that she had suffered injury on her hand and shoulder. She has also claimed that she has suffered injury on her backside. This claim of the victim (PW-3) is not corroborated by the medical report (Exhibit 'P-5') proved by PW-8. It is also evident that the victim did not disclose to PW-8 that she was administered any injection.

28. We further find from the records that the statement of the accused Satrugan Rai was recorded under Section 313 Cr.PC. In his statement under Section 313 Cr.PC, the accused has not only denied the allegations, facts and circumstances pleaded by the prosecution but has also stated in paragraph '4' that accused



Ramadhar Sahni had a land dispute with the family of the victim and because of this dispute, his name has also been given in the case.

29. The defence has also examined two witnesses. Ramanand Kumar (DW-1) has stated in his examination-in-chief that in fact, the victim had fled away with another person, later on, he came to know that because of land dispute, the present case was lodged. DW-2 Ashok Kumar Thakur is the Mukhiya of the panchayat who has also stated that because Satrugan Rai and co-accused Ramadhar Sahni are friends and there is a dispute between accused Ramadhar Sahni and the cousin maternal grandfather of the victim, due to the said land dispute, this accused has been falsely implicated.

30. Having gone into the entire evidences on the record, we have no hesitation in saying that the victim in this case is not a sterling witness and apparently, she has come out with a story which has no basis to stand. This is one of those cases in which despite presumption under Section 29 of the POCSO Act, the basic foundation on which a case under the POCSO Act may proceed are not available. Not only most relevant witnesses have been withheld by the prosecution which would lead to adverse interference against them, the prosecution witnesses who have



come to depose are either highly inconsistent or have not supported the prosecution case. This Court has already discussed the entire materials hereinabove, since it is a case in which the judgment of acquittal has been challenged. The Court has also kept in mind the judicial pronouncements on this subject by the Hon'ble Supreme Court in the case of **H.D. Sundara** (supra).

Paragraph '8' whereof reads as under:-

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment¹ rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC can be summarised as follows:

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

1. State of Karnataka v. H.K. Mariyappa , 2010 SCC OnLine Kar 5591



31. There is no reason for this Court to take a view that the accused-Respondent No. 2 is guilty of the charge in question. In fact, this Court is of the opinion that the prosecution case has rightly failed before the learned trial court.

32. This appeal has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

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