

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.354 of 2021

Arising Out of PS. Case No.-89 Year-2017 Thana- MAHILA PS District- Jehanabad

Gopal Ram, S/o Late Mathura Ram, Resident of Village Rukunpura, Post
Jaitpur Kurua, P.S. Ghosi, District Jehanabad.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Jainendra Kumar Pushkar, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 21-06-2024

On 20.06.2024 matter was fully argued by learned counsel for the appellant. However, thereafter learned counsel for the appellant requested that matter be listed on 21.06.2024 and in the interest of justice, this Court, therefore, adjourned the matter for 21.06.2024.

2. This appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') against the judgment of conviction dated 24.03.2021 and order of sentence dated 27.03.2021, passed by learned Additional Sessions Judge-VI-cum-Special Judge, POCSO, Jehanabad in POCSO Case No.47 of 2017, arising out of Jehanabad (Mahila) P.S. Case No.89 of 2017 whereby the court has convicted the appellant for the



offences punishable under Section 376 of the Indian Penal Code as well as under Section 4 of the POCSO Act and he has been sentenced to undergo rigorous imprisonment for life and a fine of Rs.20,000/- under Section 376 of the Indian Penal Code and in default of payment of fine, he is further sentenced to undergo rigorous imprisonment for one year. The appellant has further been sentenced to undergo rigorous imprisonment for life and a fine of Rs.20,000/- for the offence punishable under Section 4 of the POCSO Act and in case of default of payment of fine, he is further sentenced to undergo rigorous imprisonment for one year. The sentences have been directed to run concurrently.

3. The factual matrix of the present case is as under:-

3.1 *Fardbeyan* of Dwarika Pandit came to be recorded on 05.12.2017 at 22:20 p.m. wherein the informant has stated that on 05.12.2017 at about 04:00 p.m., he was harvesting paddy crop in the field of Lalit Babu and the victim, aged about five years, was playing there. It is further alleged that the victim came to the informant and asked him about answering the call of nature and she went to the ditch/reservoir (*Ahar*) adjacent to the field. It is alleged that after sometime the informant heard the sound of his granddaughter's screaming and crying. When the informant went there, he saw that appellant Gopal Ram was trying to commit rape upon the granddaughter of the informant. When



the informant started abusing the appellant, the appellant fled away leaving the victim. Thereafter the informant brought the victim girl to the field. By that time, the daughter-in-law of the informant came there and the informant narrated her about the incident. The informant lastly alleged that the appellant forcibly committed rape upon the granddaughter of the informant.

3.2 After registration of the formal FIR on the basis of the aforesaid *fardbeyan*, the Investigating Agency started investigation. During course of investigation, the Investigating Officer recorded the statement of the witnesses, collected the documentary evidence and thereafter filed charge-sheet against the appellant.

3.3 The case was exclusively triable by court of sessions and, therefore, the learned Magistrate committed the same to the concerned sessions court where the same was registered as POCSO Case No.47 of 2017.

3.4 During course of trial, the prosecution had examined 8 witnesses including the victim girl. Thereafter further statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court convicted the appellant for the aforesaid offences as stated hereinabove.

3.5 Against the judgment of conviction and order of sentence passed by the learned Trial Court, the appellant has filed



the instant appeal.

4. Heard Mr. Jainendra Kumar Pushkar, learned counsel for the appellant and Mr. Sujit Kumar Singh, learned APP for the State.

5. Learned counsel appearing for the appellant submits that the appellant-accused has falsely been implicated in the instant case and there are major contradictions in the deposition given by the prosecution witnesses. It is submitted that the informant has given the written complaint to the police authority and on the basis of the same FIR came to be registered. It is submitted that in fact the informant and the mother of the victim are not the eye witnesses to the occurrence in question despite which they were projected as eye witnesses by the prosecution. It is further submitted that the statement of the victim under Section 164 of the Code was not recorded despite which the Trial Court has passed the impugned judgment of conviction and order of sentence on the basis of the deposition given by the informant and the mother of the victim as well as relying upon the medical evidence. It is also submitted that independent witnesses have not been examined by the prosecution. It is submitted that though the victim was examined as P.W.8 by the prosecution, the Court has observed that she is not in a position to give names of her parents, brother and sister. She is also not in a position to give the answer



to the question put to her, therefore, her deposition was not recorded by the Court. Learned Advocate submits that there is no evidence available on record from which it can be established that the appellant-accused has committed the alleged offence and, therefore, the Trial Court ought to have acquitted the appellant. Learned counsel, therefore, urged that the appeal be allowed.

6. On the other hand, the learned APP for the State has vehemently opposed this appeal. It is submitted that serious allegations are levelled against the appellant that he has committed rape on the minor girl aged about five years. The prosecution has duly proved the said allegation by leading cogent evidence before the Trial Court. It is contended that the informant, who is the grandfather of the victim, is the eye witness to the incident in question. The informant has specifically stated in the written complaint itself that he has seen the incident. The statement of the informant as well as statement of mother of the victim under Section 164 of the Code was recorded by the Magistrate and both the witnesses have supported the case of the prosecution. At this stage, the learned APP has referred the deposition given by the doctor (P.W.6), Dr. Meena Kumari who has specifically opined that there is physical evidence of rape or attempt to rape present. Learned APP, therefore, contended that the medical evidence also supports the case of the prosecution and, therefore, the Trial Court



has not committed any error while passing the judgment of conviction and order of sentence. Learned APP, therefore, urged that the appeal be dismissed.

7. We have considered the submissions canvassed by learned counsel appearing for the parties, we have also perused the materials placed on record, the evidence led by the prosecution and the defence before the Trial Court. From the materials placed on record, it transpires that the prosecution has examined eight witnesses including the victim girl. It is pertinent to note that P.W.1, Dwarika Pandit, P.W.2, Baldeo Pandit, P.W.3, Rajmani Devi and P.W.5, Lalu Kumar @ Nirala Kumar are close relatives of the informant.

8. P.W.1, Dwarika Pandit, who is the informant of the case, has stated in his examination-in-chief that he has lodged the instant case. The occurrence took place 1½ years ago. It was 4 o'clock in the evening. He was harvesting in the field. His daughter-in-law, son, wife and granddaughter were present there. His granddaughter asked him about answering the call of nature. At that time, his granddaughter was five years old. When his granddaughter cried, he went towards the place and saw that Gopal Ram (appellant) was committing rape upon his granddaughter. The appellant fled away after seeing them. He brought his granddaughter to the field and handed her over to his daughter-in-



law. Thereafter he brought his granddaughter to home and went to the police station where he was asked that he should go to Mahila police station. It is further stated by this witness that thereafter he came to Mahila police station. As his granddaughter was crying, Daroga Ji asked him to go to the government hospital where the victim was treated. He submitted his written complaint in the police station and put his thumb impression on it.

8.1 During cross-examination, the said witness has stated that he put his thumb impression on the written complaint. He is not literate. Gopal Ram lives in the village, therefore, he knows him. It is further stated that Paras Yadav was present there where he was harvesting the paddy. His family members Mantu Pandit, Rajmani Devi and the victim girl were also present. The place of occurrence is 100 yards away from the place where he was harvesting. The place of occurrence was not visible from the place where he was harvesting the paddy. 10-12 persons also reached with him at the place of occurrence including the persons residing in other village. His son and daughter-in-law also reached there. He lodged the case on the same day. It is further stated that the witnesses are his family members. It is not true that he is giving false statement.

9. P.W.2, Baldeo Pandit, who is brother of the informant, has stated in his examination-in-chief that the



occurrence took place about two years ago. It was 4'o clock in the evening. He was present in his house and when he came outside the house, he saw that there was a commotion. He asked his brother and he told him that his granddaughter, the victim, was raped. The occurrence took place near East *Khanda* (a type of low land). It is further deposed by this witness that when he asked his brother about the incident, his brother narrated the entire facts. At the time of occurrence, the victim was five years old. The police asked him and he told the facts to the police.

9.1 During cross-examination, this witness has stated that the instant case was lodged by his brother Dwarika Pandit. He has given his statement on the basis of what Dwarika Pandit said. He has heard all this in the village itself. The people of Kurwa village were also present there besides his brother but he cannot say the names of those persons. The victim with whom rape was committed could speak. The police did not take statement of the victim girl before him. The police took the victim girl to the room for questioning. He told the police that there was commotion in the street. He had also said before the police that Gopal Ram had raped and the occurrence took place near East *Khanda*. This witness further stated in his cross-examination that he had said the entire facts before the police narrated by his brother. This witness has denied the suggestion that Gopal Ram did not commit any



wrong act with the granddaughter of Dwarika Pandit and Dwarika Pandit has given wrong statement at the behest of his brother and falsely implicated Gopal Ram. He has also denied the suggestion that since the son of Dwarika Pandit had embezzled money of Indira Awas, he has filed a false case out of this grudge.

10. P.W.3, Rajmani Devi is the mother of the victim girl who has deposed in her examination-in-chief that the occurrence took place two years before. It was 4 O'clock in the evening. At that time, she was harvesting paddy crop with her father-in-law. Her father-in-law, husband, mother-in-law and her daughter were also present there. It is further deposed that when she returned after putting the paddy, she saw that her father-in-law was holding her daughter in his lap and her daughter was crying. Thereafter her father-in-law told that Gopal Ram committed rape with her daughter. She brought her daughter to her home. She went to Okri police station where Daroga Ji said her to go to Mahila police station Jehanabad and she came to Mahila police station. Thereafter the victim girl was brought to Jehanabad hospital for treatment. When she went to the police station, she handed over the clothes to the police worn by her daughter and seizure list was prepared on which she had put her signature. She has given statement before the police and she also narrated the aforesaid facts to the police. She knows the accused who is present in court



and his name is Gopal Ram.

10.1 During cross-examination, P.W.3, stated that there was distance of $\frac{1}{2}$ k.m. between the places from where she was bringing the bundle and the place where she was putting it and work of harvesting was not being done in any field. Whatever testimony she has given, she has given it after her father-in-law told her about the incident. She had also given statement before the police. She told the police that her father-in-law was holding the victim in his lap and told her that her daughter was raped by Gopal Ram. She had a conversation with her daughter at home only and not in the field. She put her signature on the seizure list after reading it. She had further stated in her cross-examination that she had handed over the clothes of the victim girl in Mahila police station. The doctor also saw her daughter. This witness has denied the suggestion that the doctor did not find any evidence of rape of her daughter and that she has conspired and falsely implicated the accused. Her statement was recorded before the Magistrate after two days of the incident. This statement was given on her own accord and not after being told or taught by the police.

11. P.W.4, Sanjay Kumar has deposed in his examination-in-chief that the occurrence took place two years ago. It was 3-4 o' clock in the evening. At that time, he was working in the *Khanda* of his village. He heard from the village people that



rape was committed with the younger granddaughter of Dwarika Pandit. He heard that Gopal Ram committed rape with her. The police also inquired him.

11.1 During cross-examination, this witness has stated that Gopal Ram is of his village, therefore, he knows him. He cannot say that from whom he heard about this incident. He returned in his village after sunset and thereafter he heard about the incident. Dwarika Pandit has no involvement in the case in which he deposed.

12. P.W.5, Lalu Kumar @ Nirala Kumar has deposed in his examination-in-chief that the victim girl is his niece. The victim was five years old at the time of occurrence. The occurrence took place on 05.12.2017 at 4 o'clock in the evening. He was in Jehanabad at that time. He got information through mobile phone that Gopal Ram had committed rape with the victim. At the time of occurrence, his father was ploughing the field in the *Khanda*. At that time, his sister-in-law and the victim girl were also present there. Thereafter this witness deposed about the entire incident as deposed by other witnesses. Thereafter his father came to the village and went to Okri police station where he was asked to go to Mahila police station. He also went to the police station after getting the information and saw his niece. The clothes which were worn by her niece at the time of occurrence were handed



over to the police and the police prepared seizure list on which he put his signature. The police had also inquired from him.

12.1 During cross-examination the said witness stated that whatever he deposed in his examination-in-chief, he heard the entire facts from his father. He got all the information about the incident in Jehanabad through mobile phone. He was living in Jehanabad since 2009. No one from Lalit Babu's family was present in the field at the time of *Katiauni*. Agricultural work was also going on in nearby fields. Agriculture work in the field of Paras Yadav was going on. Sanjay Kumar, the witness in this case does not belong to his family and he has no enmity with him. All the villagers came to know about the incident. The police had inquired other persons in the village as well regarding the occurrence. This witness has denied the suggestion that he has deposed falsely due to being a member of the family.

13. P.W.6, Dr. Meena Kumari is the doctor who had examined the victim and found as follows:

No secondary sexual characters present.

No external injury present.

Vulval swelling present.

Hymen torned.

Vulvae and vagina swollen and inflammed.

Opinion-



From the above findings it may be concluded that there is physical evidence of rape or attempt to rape present.

13.1. This witness stated in her cross-examination that attempt to rape and rape are two different things. It is not possible. She cannot say whether rape or attempt to rape committed or not. Rape can only be ascertained after the examination of vaginal swab if spermatozoa is found. It is further stated that after micro biological examination spermatozoa not found. This witness further stated in her cross-examination that Vulva is upper part of vagina. Swelling of vulva is not possible by different reasons. After cutting an insect swelling, itching must present and swelling was focal or unilateral nor homogeneous or bilateral.

14. P.W.7, Kusum Bharti is the Investigating Officer of the case, who has deposed in her examination-in-chief that she was posted as S.H.O. of Mahila Police Station, Jehanabad on the date of occurrence and on that day she received a written complaint from Dwarika Pandit on which his thumb impression was put. She registered the case on the basis of the complaint. It is further stated that the pant worn by the victim was seized and she prepared the seizure list. She started the investigation. The victim was brought to Jehanabad Sadar Hospital where she was treated. She recorded re-statement of the informant. Thereafter she



recorded the statement of mother and uncle of the victim. She inspected the place of occurrence. She arrested the appellant-accused on 07.12.2017 and sent him to jail. Thereafter application for recording the statement of informant and mother of the victim under Section 164 of the Code was given as the victim was not in a position to give her statement. Thereafter statement of the informant and the mother of the victim was recorded under Section 164 of the Code. She submitted charge-sheet against the appellant on 24.02.2018 under Section 376 of the Indian Penal Code and Section 4 of the POCSO Act. Thereafter she was transferred and she gave charge to A.S.I., Kunti Kumari.

14.1. This witness has stated in her cross-examination that she has not examined any independent witness. She did not find any objectionable article at the place of occurrence. She seized the clothes of the victim and prepared seizure list. She did not find any criminal antecedent of the appellant. She had not recorded the statement of the victim as the victim was unable to speak. She has further stated in her cross-examination that Baldeo Ram (P.W.2) had not said about rape. P.W.2 had not said that the rape was committed in East *Khanda*. P.W.2 did not say that accused was indulged in wrong act. Baldeo Pandit had given testimony on the basis of what he heard.

15. We have re-appreciated the entire evidence led by



the prosecution. From perusal of the evidence led by the prosecution, it would reveal that P.W.1, Dwarika Pandit is the grandfather of the victim. In the written complaint filed by him he specifically narrated the entire evidence. The informant has specifically alleged that after hearing the sound of cry of her granddaughter, he went to the place and saw that the appellant was trying to penetrate his penis into the vagina of the victim girl. When the informant started abusing the appellant, he fled away after leaving his granddaughter. Thereafter the daughter-in-law of the informant came and he narrated the entire incident to her.

15.1. At this stage, it is relevant to note that the statement of the informant was recorded under Section 164 of the Code by the Magistrate. In the said statement also, the informant has stated that after hearing the sound of victim, he went to the place and saw that Gopal Ram was sexually abusing his granddaughter and she was unconscious. When the informant went to catch him, the appellant fled away.

15.2. The informant (P.W.1) has also deposed before the Court that when he heard the sound of his granddaughter, he went towards the place and saw that Gopal Ram was committing rape with her.

15.3. Thus, from the aforesaid evidence led by the prosecution, it is revealed that the informant is the eye witness



who has seen the incident. It is relevant to note at this stage that the FIR was immediately lodged and after registration of the FIR on 05.12.2017 at 22:20 hours, the victim was taken to Sadar Hospital, Jehanabad. The medical officer Dr. Meena Kumari (P.W.6) examined the victim at 10:45, i.e., 22:45 hours. It further transpires from the evidence that when the doctor examined the victim, she had noticed that Vulval swelling present, Hymen torned and Vulvae and vagina swollen and inflammed. The doctor has, therefore, given the opinion that it may be concluded that there is physical evidence of rape or attempt to rape present.

16. Thus, from the evidence led by the prosecution, it can be said that the version given by the informant is supported by the medical evidence and, therefore, there is no reason to disbelieve the said witness.

17. It is also relevant to note that the victim was aged about five years at the time of incident and she was produced by the prosecution as P.W.8. However, when the Court asked certain questions to her, she could not give proper answer to the same and, therefore, the Court has specifically observed that the victim is not in a position to speak and her deposition was not recorded.

18. Though learned counsel for the appellant has argued that the appellant has falsely been implicated, there is nothing on record to suggest that there was animosity between the



parties, therefore, he has falsely been implicated. No suggestion was made to the witnesses with regard to the same. Further, while giving statement under Section 313 of the Code, the appellant-accused has not stated anything with regard to his false implication and the reason of false implication before the Court.

19. We have also gone through the reasoning recorded by the Trial Court and we are of the view that when the prosecution has proved the case against the appellant-accused beyond reasonable doubt, no error is committed by the Trial Court while passing the impugned judgment of conviction and order of sentence. Hence, we are of the view that no interference is required in the present appeal.

20. Accordingly, the appeal is dismissed.

(Vipul M. Pancholi, J.)

(Ramesh Chand Malviya, J.)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.06.2024
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