

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1628 of 2022

Arising Out of PS. Case No.-8 Year-2018 Thana- MAHILA P.S. District- Siwan

Ramesh Yadav, Son of Dhodha Yadav @ Dhona Ray, R/O Village- Ageyan
Mathia, P.S.- Goreakothi, District- Siwan

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Pandey, Adv.
For the State	:	Mr. Binay Krishna, APP
For the Informant	:	Mr. Udit Narayan Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT

Date : 16-02-2024

1. Heard learned counsel appearing for the appellant,
learned APP for the State and learned counsel for the informant.

2. The appeal has been filed against the judgment of conviction dated 18.11.2021 and order of sentence dated 15.12.2021 passed by learned Additional Sessions Judge-VI-cum-Special Judge POCSO, Siwan, in connection with Special POCSO Case No. 73/2019 arising out of Siwan Mahila P.S. Case No. 08 of 2018, whereby and whereunder the appellant has been convicted for the offences punishable under Section 376 of the Indian Penal Code (hereinafter referred to as IPC) and Section(s) 4 and 8 of Protection of Children from Sexual Offences Act (hereinafter referred to as POCSO Act) and sentenced to undergo rigorous imprisonment for 10 (ten) years for the offence punishable under Section 376 of IPC with a fine of Rs. 10,000/- and in default of



payment of fine, to further suffer 6 (six) months of rigorous imprisonment and to undergo rigorous imprisonment for 7 (seven) years for the offence punishable under Section 4 of POCSO Act with a fine of Rs. 5,000/- and in default of payment of fine, to further suffer 3 (three) months of rigorous imprisonment and to undergo rigorous imprisonment for 3 (three) years for the offence punishable under Section 8 of POCSO Act with a fine of Rs. 5,000/- and in default of payment of fine, to further suffer 3 (three) months of rigorous imprisonment and all the sentences have been directed to run concurrently.

3. The appellant Ramesh Yadav has faced trial in connection with Siwan Mahila P.S. Case No. 08 of 2018 registered under Section 376 of IPC, Sections 4, 6, 8 and 12 of POCSO Act and Section 3(1)(w)(ii) and 3(2)(va) of the SC/ST Act and he stood charged for the offences punishable under Section 376 of IPC and Sections 4 and 8 of POCSO Act and his trial resulted in his conviction but the appellant was acquitted of the offence punishable under Section 3(1)(w)(ii) and 3(2)(va) of the SC/ST Act.

4. After taking evidence of prosecution and examining the appellant, the learned trial court held the appellant guilty of the offences punishable under Section 376 of IPC and Sections 4 and 8 of POCSO Act and sentenced him in the manner mentioned above.



5. Learned counsel for the appellant has argued that before the trial court, the most important witnesses namely 'X' and 'Y' (their names are not being disclosed for the purpose of keeping the identity of the victim secret), who are said to be present along with the so-called victim at the relevant time of commission of the alleged occurrence, were not examined before the trial court and the victim who was examined as P.W. 1 was not a competent witness and she was also a tutored witness but even then, the learned trial court placed reliance upon her statement and the medical evidence given by Dr.Rita Sinha(P.W. 8) does not support the prosecution's allegation as according to her evidence, no spermatozoa either dead or alive was found at the private part of the so-called victim who was medically examined on the same day of the alleged occurrence and the FIR was lodged only with an intention to get compensation from the government. It has been further argued that the appellant was dragged in the alleged occurrence due to village politics and enmity and all the private non-official witnesses of the prosecution are interested witnesses and they deposed contradictory facts before the trial court.

6. On the contrary, learned APP has submitted that the alleged occurrence of rape was committed with a three and half year old minor girl by this appellant and the allegation against him gets support from the medical evidence given by P.W. 8, who



examined the victim. Before the trial court, the victim fully supported the allegation levelled in the FIR and the evidence of other prosecution witnesses is also corroborative to the prosecution's allegation.

7. Heard both the sides, perused the judgment impugned and evidences available on the case record of the trial court and also gone through the statement of accused.

8. On 13.02.2018 at about 10:00 A.M., as per the allegation, the informant's minor daughter, aged about three and half year, went to attend call of nature at Billari Chour in her village along with two children namely 'X' aged about five years and 'Y' aged about four years and then the appellant aged about twenty years forcefully lifted her in his lap and thereafter, took her in a field where he raped her. The victim's companion children 'X' and 'Y' informed the victim's father about the commission of the alleged occurrence and thereafter, the informant went to search for his daughter then he saw his daughter coming in weeping condition and at that time, there was also bleeding from the body of the victim.

9. The alleged occurrence is stated to have been committed on 13.02.2018 at about 10:00 A.M. and the FIR was lodged on the same day in the evening at 6:15 P.M. which shows



that the FIR was lodged immediately and the same shows its naturalness.

10. In the light of the prosecution's story appearing from the FIR, in the present matter, the most important witnesses are the victim, who happens to be daughter of the informant, victim's companion children 'X' and 'Y' who are said sister and brother of the victim. Though, in the present matter, 'X' and 'Y' were not produced and examined by the prosecution before the trial court but the victim was produced and examined as P.W. 1.

11. The victim is said to be a three and half years old minor girl at the time of commission of the offence of rape and it has been argued by learned counsel for the appellant that the victim was not a competent witness. But the facts revealed and stated by the victim in her examination-in-chief show that she was capable of understanding the relevant questions which were put to her by the trial court and it is settled principle of law that a child can be a competent witness if he/she is capable of giving rational answers to the questions which are put to him/her and in the present matter, the victim deposed rationally in her examination-in-chief and in this regard, I perused her examination-in-chief. She deposed that she, her sister and brother went to attend call of nature at Billari Chour in her village and her sister and brother's names were 'X' and 'Y' and at that time, there was month of



winter and she suffered bleeding and she started weeping when she saw blood and she was brought home by her brother and sister and then she told her parents about the incident. She further stated that she was treated and examined at a hospital and the accused Ramesh Kumar is also called by his second name Ghengha. These facts deposed by the victim clearly show that she was a competent witness at the time of recording her evidence before the trial court.

12. The informant, examined as P.W. 2, deposed that the alleged occurrence took place on 13.08.2018 at 10:00 A.M. and at that time, he was at his home and his three children including the victim went to attend call of nature at Billari Chour in his village and then the accused lifted the victim and took her and then his other children 'X' and 'Y' came running to his house and informed him about the appellant's act and thereafter, he went to search for his daughter and then saw his daughter in bleeding condition and at that time, she was not able even to move and thereafter, he went to Goreakothi police station from where he was sent to Mahila police station, Siwan where he lodged the FIR and from there, he and SHO went to Sadar hospital and thereafter, the victim was referred to PMCH, Patna. The witness deposed in the cross-examination that the appellant is his co-villager and he is known to him and he had contacted to mukhiya of his village before he went



to police station and then a panchayat meeting was also held in which Rs. 5,000/- (rupees five thousand) was given on behalf of the accused/appellant for medical treatment of the victim. The facts deposed by this witness clearly go to show that the informant who happens to be father of the victim found the victim in bleeding condition and he firstly approached to mukhiya of his village and thereafter, a panchayat meeting was also held, in which, the accused's family gave Rs. 5,000/- to him for the treatment of the victim but that was not enough and thereafter, the said witness went to the police station and lodged the FIR. From the evidence of this witness, it is also evident that there was no any type of dispute in between the victim's family and the appellant's family during the relevant period of time of commission of the alleged occurrence so there was no reason for the victim and her family members to make a false allegation of such heinous offence against the appellant and the victim was found in bleeding condition by this witness. These facts are completely corroborative to the allegation levelled by the victim and the same evidence was given by other P.Ws. No. 2, 3, 5 and 6 and all of them deposed that the victim along with her brother and sister went to attend call of nature and thereafter, the accused/appellant raped her which resulted in bleeding injury to the victim. These witnesses also supported the factum as to the victim having been found in



bleeding condition and thereafter, the victim was treated at Siwan Sadar hospital and PMCH, Patna.

13. P.W. 7, Ganga Prasad Singh, who investigated the present matter, deposed in his examination-in-chief that the victim's undergarment having blood stain was produced by the victim's mother that was seized and the seizure memo was prepared that was marked as Ext.- 3. He further deposed that the victim's undergarment was sent to FSL for examination.

14. Here, it is important to mention that the victim's cloth's examination report sent by the FSL was produced and marked as Ext. 6 and 6/1 before the trial court and according to FSL opinion, blood stains were detected over the victim's cloth. The said finding given by FSL department also goes in favour of the prosecution's allegation.

15. Prosecution's witness P.W. 8/Dr. Rita Sinha, who examined the victim, deposed that she found the following injuries on the body of the victim at the time of the examination :---

- (i) An abrasion about 1cm below right eye on right cheek.
- (ii) Swelling with an abrasion on left ala of nose.
- (iii) Multiple scratch marks over lower abdomen and vulva.
- (iv) The presence of blood stains over vulva and front and inner side of both thighs.
- (v) Hymen ruptured.



(vi) Vulva swallow.

(vii) Fourchette present with bleeding.

(viii) Ghaugh piece about 3" X 1" present over private part.

The Doctor opined that there was an evidence of sexual assault.

16. The medical expert who examined the victim on the same day of the alleged occurrence found the above-mentioned several injuries on the person including the private part of the victim and the said injuries are completely supportive to the prosecution's allegation.

17. Though as per medical expert's (P.W. 8) observation, no spermatozoa either dead or alive was found but merely by this fact, the allegation of rape levelled by the victim can not be deemed to be false particularly in the presence of several injuries which were found on the person of the victim.

18. In view of the circumstances appearing from above discussed facts and evidences, this Court forms the opinion that the appellant, firstly, lifted the victim forcefully and thereafter, raped her and the allegation of rape with the victim gets support from the medical expert's opinion who was examined as P.W. 8 and he proved the victim's medical examination report and the evidence of other prosecution witnesses is also supportive to the prosecution's allegation hence, the judgment and order impugned



convicting and sentencing the appellant for the alleged offences appear to be proper and legal and this Court finds no reason to interfere in the same. Accordingly, the instant appeal stands dismissed.

19. Let the judgment's copy be sent immediately to the trial court as well as the jail authority concerned for needful.

20. Let the LCR be sent back to the trial court concerned forthwith.

(Shailendra Singh, J)

annu/-

AFR/NAFR	AFR
CAV DATE	29.01.2024
Uploading Date	16.02.2024
Transmission Date	16.02.2024

