

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.373 of 2022

Arising Out of PS. Case No.-188 Year-2014 Thana- PARSABAZAR District- Patna

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Lorik Kumar, aged about 28 years, male, Son of Kameshwar Yadav @ Munna
Yadav, Resident of village - Mahuabag, P.S. - Parsa Bazar, District - Patna.

... .. Appellant/s

Versus

1. The State of Bihar.
2. 'X'

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Dhaneshwar Prasad Gupta, Adv.
For the State : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 22-02-2024

Heard Mr. Dhaneshwar Prasad Gupta,

the learned Advocate for the sole appellant/Lorik

Kumar, who has been convicted for the offences

under Sections 376-D, 302 and 201/34 of the Indian

Penal Code and Section 4 of the Protection of



Children from Sexual Offences Act, 2012 *vide* judgment dated 11th of March, 2022 passed by the learned Additional Sessions Judge-VI-Cum-Special Judge, POCSO Act, Patna in connection with Spl. (POCSO) Case No. 52 of 2014, CIS No. 5942 of 2014, arising out of Parsa Bazar P.S. Case No. 188 of 2014. By order dated 11th of March, 2022, he has been sentenced to undergo R.I. for 20 years, to pay a fine of Rs. 10,000/- for the offence under Section 376-D of the I.P.C. read with Section 4 of the POCSO Act; to undergo life imprisonment, to pay a fine of Rs. 10,000/- for the offence under Section 302 of the I.P.C. and to undergo R.I. for 3 years, to pay a fine of Rs. 5,000/- for the offence under Section 201 of the I.P.C. In default of payment of fine, the appellant has further been sentenced to undergo S.I. for 1 month.

2. All the sentences have been ordered to run concurrently.



3. The State has been represented by Mr. Sujit Kumar Singh, the learned Additional Public Prosecutor.

4. The F.I.R. was lodged by the father of the deceased, viz., Sadhu Pandit (P.W. 4). He has alleged that a religious congregation was held in the village in evening of 01.11.2014. His two daughters, one being the deceased and the other (P.W. 3), had also gone to attend the congregation. Later, in the night at about 2 O' Clock, the deceased, after informing her younger sister (P.W. 3), went out to attend to the call of nature as also for quenching her thirst. When she did not return after some time, P.W. 3 went to look for her. She first went to a place where the hand-pipe was located, but did not find her sister. Thereafter, when she reached near the local temple, she found the appellant and one Mantu Kumar along with their friends, consuming liquor. All of them had a scarf tied on their heads which



reflected that they were also participants of the religious congregation. Thereafter, P.W. 3 came back home, but did not inform anybody and went off to sleep. In the morning, when P.W. 4 got up, he did not find his elder daughter. His younger daughter (P.W. 3) informed him that the deceased had gone to attend to the call of nature and she had also tried to look for her, but did not find her. She also narrated to P.W. 4 that she had seen the appellant, one Mantu Kumar and few others consuming liquor. During the course of search, the dead-body of the daughter of P.W. 4 was found lying in the field. There was a black contusion mark on the neck of the deceased. Near the place where the occurrence might have taken place, beer bottles and red scarves were also found. After the occurrence, P.W. 4 has asserted, the appellant and his associates were not to be found in the village. It was, therefore, suspected that the appellant along with his friends, in a state of



intoxication, had raped the victim/deceased and, thereafter, had killed her by strangulating her.

5. On the basis of the afore-noted *fardbeyan* statement given by P.W. 4, a case *vide* Parsa Bazar P.S. Case No. 188 of 2014, dated 02.11.2014, was registered for investigation for the offences under Sections 376(G), 302 and 201/34 of the I.P.C and Section 8 of the POCSO Act.

6. Co-accused/Mantu Kumar, this Court has been informed was declared to be a juvenile who was tried by the Juvenile Justice Board and has since been acquitted.

7. The police, after investigation, submitted *charge-sheet* against the appellant, whereupon cognizance was taken against him and the case was committed to the Court of *Sessions* for Trial.

8. The learned Special Court, after having examined seven witnesses on behalf of the prosecution and two on behalf of the defence,



convicted and sentenced the appellant as aforesaid.

9. Mr. Gupta, the learned Advocate for the appellant has submitted that the prosecution has only jumped to the conclusion that the appellant and his associates had committed the crime and that also for the reason that P.W. 3, the younger sister of the deceased, had found him and his friends consuming liquor at a place very near to where the religious congregation was held.

10. It has further been argued that the appellant, on his arrest, was never subjected to any medical examination as mandated under Section 53-A of the Code of Criminal Procedure. It has also been submitted that the Trial Court did not await the F.S.L. report regarding the vaginal swab for detection of any spermatozoa as a confirmatory test for the deceased having been raped.

11. On perusal of the records of the case, we find that on 02nd of November, 2014 only,



the *post-mortem* was conducted on the body of the deceased by P.W. 7/Dr. Shiv Ranjan Kumar. He had found one curvilinear abrasion, reddish brown in colour on the mid part of the neck. On incision of the subcutaneous layer, there were underlying dark reddish coloration. However, there was no extravasation of blood in the strap muscles and the cartilages as well as hyoid bone was found to be intact. There were presence of blood clots over the tracheal cartilages and epiglottis as also on the adjacent tissues. The lips had swelling and internal mucosal lacerations. The gums attached to the upper and lower mid lips were also smeared with blood clots. On the examination of the private parts of the deceased, the labia minora and the labia majora were found to be injured. The hymen was torn. The vaginal slides were prepared and preserved for the purposes of forensic examination. The *viscera* also was preserved for further confirmation.



12. According the P.W. 7, the cause of death was asphyxia and the time of the death was fixed at 24 hours from the time of *post-mortem* examination. P.W. 7 has categorically stated that the injuries found on the body of the deceased clearly suggested rape. The deceased had died of strangulation and was also raped.

13. This stands proved by the deposition of P.W. 7.

14. The question now arises as to whether the accusation against the appellant could be proved at the Trial.

15. The sister of victim/deceased (P.W. 3) has stated before the Trial Court that she was about a year younger to the deceased. She had accompanied the deceased to the religious congregation and had gone to look for her when she did not return for quite some time after attending to the call of nature, on which pretext she had gone



alone in the village. When she went in search of her sister, she has supported the version which she gave to P.W. 4, her father, that she found the appellant along with his friends consuming liquor. All of them appeared to be participants of the religious congregation also as they all had sported the red-coloured scarf meant to be worn by the participants of the congregation.

16. P.W. 3, during her cross-examination, had admitted that the residence of the appellant is situated close by. There was no bad relationship between the families and even the appellant had, in the past, not done anything to harbour any suspicion about his having committed the offence. However, she has stated that everybody in the village suspected nobody else except the appellant as he had been spotted consuming liquor in the night along with his friends.

17. Similar statements have been made



by Sudhir Pandit (P.W. 1), who is the cousin of the deceased and Jawahar Pandit (P.W. 2), who is one of the uncles of the deceased and had accompanied P.W. 4 in search of the deceased.

18. Sudhir Pandit (P.W. 1) has categorically denied of his having seen any part of the occurrence and had narrated about the incident on the basis of what was told to him by P.W. 4. Who had informed P.W. 4 about the occurrence was not known to him. P.W. 2, likewise, had only seen the dead-body of the deceased and had heard from P.W. 4 about what was reported to him by the sister of the deceased (P.W. 3).

19. P.W. 5/Champa Devi @ Rubi Devi, who is the mother of the deceased has also raised suspicion on the appellant for the reason of his having been spotted by P.W. 3 consuming liquor in the night of the occurrence.

20. The learned Trial Court has listed



some of the circumstances to conclude that it was the appellant and his associates only who had committed the offence. Those circumstances are stated to be, (a) holding of a religious congregation in the night of 01.11.2014; (b) the victim/deceased and P.W. 3 having attended the same till late in the night; (c) the victim going out of the marquee to attend to the call of nature and her not returning back to the place for quite sometime; (d) P.W. 3, while looking for her sister, had found the appellant and his associates consuming liquor. Those persons were sporting a particular kind of scarf on their heads. The dead-body of the deceased was found in the field somewhere near the temple and the appellant and his associates had absconded for sometime.

21. These are the links which the Trial Court took into account for coming to the conclusion that the appellant had committed the offence.

22. After having gone through the entire



records and the deposition of the witnesses, it becomes very evident that the deceased died of strangulation. She was, no doubt, raped also which is reflected from the injuries suffered by her on her private parts. The hymen, as noted above, was found to be completely torn. The assertion of some of the witnesses that the dead-body was lying naked has not been supported by the other witnesses. In fact, the I.O. has specifically stated that none of the witnesses told him during the investigation that the deceased was lying naked. The I.O. had found pair of slippers and empty liquor bottles near the place where the occurrence might have been committed.

23. Beyond this, there is no other material to connect the appellant with the offence.

24. We have also found that the Trial Court though took note of the fact that the law with respect to circumstantial evidence required a Court of law to ascertain whether the circumstance from which



the conclusion of the guilt is required to be drawn is fully established; that the facts established should be consistent only with the hypothesis of the guilt of the accused, *i.e.*, that those circumstances may not be explainable on any other hypothesis except that the accused is guilty; the circumstances should be of conclusive nature and tendency and that those circumstances should exclude every possible hypothesis except the one to be proved. The chain of circumstance should be so complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been done by the accused only, but does not seem to have applied those principles in actuality.

25. True it is that there is nothing on record to dispute the assertion of P.W. 3 that in the late hours, in the night intervening between 1st and 2nd of November, 2014, the victim had gone out of



the tent which has been erected for the purpose of holding congregation and did not come back for quite sometime and when P.W. 3 went to look for her, she found the appellant and others consuming liquor. This may be the starting point of investigation, but cannot be said to be any full-proof and fail-safe evidence of the appellant only having committed the crime.

26. The occurrence had taken place in the vicinity of the place where many people had assembled for the afore-noted religious congregation. Though it was night, but in the presence of many people in the neighborhood, all awake and participating in the religious function, some one would surely have noticed the appellant and his associates consuming liquor publicly. Even if it had been, that by itself would not lead to the only inescapable conclusion that the appellant along with his associates committed the act of murder and raped, either driven



by lust or under stupor or intoxication.

27. Under such circumstances, it was very necessary for the prosecution to have subjected the appellant to medical examination as a case under Section 376(G) of the I.P.C. was registered on the statement of P.W. 4. That not having been done, the whole purpose of preserving the vaginal swab and sending it for forensic examination was rendered futile. The Trial Court did not even await the forensic report about the vaginal swab which was sent to it for examination. Even if the report would have come, in the absence of any medical examination of the accused, that information would have left the evidence link completely inchoate so far as the appellant is concerned.

28. The investigator of this case, namely, Nand Jee Prasad (P.W. 6) had learnt through a rumour afloat in the village that a girl in her teens had been killed and her dead-body was lying in the field.



This information was recorded as a Station Diary Entry and the investigator proceeded to the place of the occurrence where the dead-body was found. It was at that place only that the dead-body was found and the investigator met the witnesses, whose statements were recorded by him. All the witnesses narrated the same story before him, namely, of the appellant having been seen by P.W. 3 consuming liquor along with his associates. If this were so, it was all the more necessary for the appellant to have been arrested and subjected to medical examination, if at all the version of P.W. 3 was accepted to be *ex facie* true.

29. We have given our anxious consideration to each of the circumstances listed by the learned Trial Court for coming to his conclusion, but they all fall far short of the case being proved beyond all reasonable doubts.

30. Assuming that the appellant and his



associates had consumed liquor somewhere near the outskirts of the village, that would not lead to the only inference that such an abominable crime was committed by him and his associates.

31. The investigator appears to have proceeded with and briefly concluded such investigation on the basis of such presumption only.

32. None of the circumstances listed by the Trial Court make out a situation where the only conclusion would be that the appellant is guilty.

33. It is really unfortunate that a young girl has lost her life and was also raped before she was killed. Nothing could be more diabolical than this; but equally important would be the responsibility of the Court to test every link suggested by the prosecution and find out whether the chain is completely forged so as to make the prosecution case absolutely fail-safe.

34. We do reckon that looking for



mathematical niceties in appreciating the evidence is not what the law mandates, but then the circumstances suggested by the prosecution, individually and cumulatively, do not commend to us that the only derivable conclusion is that the appellant had committed the crime.

35. For the afore-noted reasons, we do not approve of the final conclusion of the Trial Court regarding the guilt of the appellant.

36. The benefit of doubt has to be given to the appellant.

37. We, accordingly, set side the judgment of conviction and order of sentence dated 11th of March, 2022 passed by the learned Additional Sessions Judge-VI-Cum-Special Judge, POCSO Act, Patna in connection with Spl. (POCSO) Case No. 52 of 2014, CIS No. 5942 of 2014, arising out of Parsa Bazar P.S. Case No. 188 of 2014, and acquit the appellant, above-named, of the charges levelled



against him.

38. The appeal is allowed.

39. The appellant/Lorik Kumar is said to be in custody since 12.11.2014. He is directed to be set at liberty forthwith if not required in any other case.

40. Let a copy of this judgment be transmitted to the Superintendent of the concerned Jail forthwith for compliance as also for record.

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

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

(Ashutosh Kumar, J)

(A. Abhishek Reddy , J)

Praveen-II/Gaurav

AFR/NAFR	NAFR
CAV DATE	N/A
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