

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.10 of 2016

Arising Out of PS. Case No.-29 Year-2013 Thana- SIKARHATTA District- Bhojpur

Fulchandra Paswan @ Dara Son of Late Kedar Paswan, Resident of village-
S. Krahata, P.S.- Sikrahata, District- Bhojpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Priya, *Amicus Curiae*
For the Respondent/s : Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 03-04-2024

The present appeal has been filed under Section-374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') challenging the judgment of conviction dated 12.01.2015 and order of sentence dated 14.01.2015 passed by J.P. Mishra, learned 1st Additional Sessions Judge-Cum-Special Judge, POCSO, Bhojpur at Ara, in connection with POCSO Case No. 6/2023, (arising out of Sikarahata P.S. Case No. 29 of 2023) by which the appellant/convict has been convicted for the offences under Section-376 of I.P.C. and Sections-4 and 6 of the POCSO Act and sentenced to undergo imprisonment for life under Section- 6 of the POCSO Act.

2. At the outset, it is relevant to note that Mr.



Prabhat Kumar Singh, learned counsel, was appearing for the appellant so far. However, when the matter was called out for hearing on 01.04.2024, he submitted that he had already given no objection to the appellant and he has returned the papers. Therefore, he is no longer appearing in the matter. The appeal is of the year 2016 and from the record it transpires that the appellant is in custody for last 11 years. Therefore, we had requested Ms. Priya, learned counsel, to assist the Court in the matter and, with her consent, she is appointed as *Amicus Curiae*. At her request, the matter was adjourned on 02.04.2024. Once again learned *Amicus Curiae* requested for time for preparing herself and the matter was again adjourned to 03.04.2024.

3. Heard Ms. Priya, learned *Amicus Curiae*, for the appellant and Mr. Ajay Mishra, learned A.P.P. for the respondent-State.

4. The brief facts leading to the filing of the present appeal are as under:

“In the night of 19.05.2013, at 08:00 p.m., the daughter of the informant, aged about 8 years, had gone after taking meal to watch cinema in the neighbourhood in the marriage ceremony. On 20.05.2013, at 03:00 a.m., she came



home weeping and informed that during the course of watching cinema she fell asleep when accused Fulchandra Paswan @ Dara, son of Kedar Paswan, aged about 28 years, resident of the same village took her to the *Koli* behind the house of Hakik Mian and forcibly gagged her mouth and outraged her modesty. When the informant examined her daughter's underwear, it was torn and blood stained and blood was still oozing out of her private part.

5. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions.

6. Before the Trial Court, prosecution examined 8 witnesses.

7. Learned *Amicus Curiae* submits that the appellant has been falsely implicated in the occurrence in question. It is contended that there is only deposition of the victim, who is aged about 8 years, only on the basis of which the learned Trial Court has recorded the order of conviction. No



corroborative evidence has been produced by the prosecution in support of the allegation levelled by the victim girl. It is further submitted that though the Investigating Officer had collected the blood from the place of occurrence and blood-stained clothes of the victim girl were seized and sent for necessary analysis to Forensic Science Laboratory, the F.S.L. report has not been produced before the learned Trial Court. It is further submitted that even medical evidence does not fully support the case of the prosecution. Hence, the prosecution has failed to prove the case against the appellant beyond reasonable doubt, despite which the Trial Court has passed the impugned judgment and order.

8. Learned *Amicus Curiae* lastly urged that the present appeal be allowed and thereby the impugned judgment of conviction and order of sentence passed by the learned Trial Court be quashed and set aside.

9. On the other hand, learned A.P.P., has vehemently opposed the present appeal. It has been mainly contended that the present is a glaring case of moral turpitude. The appellant has neither examined any defence witness nor produced any documentary evidence to prove his innocence. No motive has been attributed for falsely implicating the appellant.



The victim is consistent in her statements recorded under Sections-161 and 164 Cr.P.C. Thus, when the prosecution has proved the case against the appellant beyond reasonable doubt, no error has been committed by the learned Trial Court while passing the impugned judgment of conviction and order of sentence. He has, therefore, submitted that the present appeal be dismissed.

10. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the evidence of prosecution witnesses and also perused the documentary evidence exhibited.

11. At this stage, we would like to appreciate the entire evidence led by the prosecution before the Trial Court.

12. P.W. 1, Algu Sah, has not supported the prosecution-case and he has been declared 'hostile'.

13. P.W. 2, Parshuram Rajbhar, is a seizure-list witness to the seized *Gamchi*. He has not thrown any light on the alleged incident.

14. P.W. 3 Tunni Devi is the mother of the victim girl and informant of the present case. She has stated in her examination-in-chief that one year ago at 8:00 p.m. her daughter, aged about 9 years, had gone to watch marriage procession



(*Barat*). At 03:00 a.m. she came home weeping. When asked about the cause of weeping, she stated that Fulchandra had committed wrong with her. Her private parts were torn and damaged. She narrated the whole incident to the Darogaji. Darogaji noted down the same and read over the same to her. Being satisfied with the statement recorded, she put her thumb impression on the same. Her daughter was also medically examined. Her daughter's statement was also recorded in the Court. Police had again taken her statement. She had also handed over the blood stained lower (*Salwar*) of her daughter. She has identified the accused present in the Court.

14.1. In her cross-examination, she has stated that the marriage ceremony was held in the house of her neighbour Sahdeo. His house is situated after 4-5 houses from her house. Her daughter had gone there alone to watch cinema. Till the time she went to sleep, her daughter had not returned. She had gone to search her at 08:00 p.m., when marriage procession was at the door and, as her daughter was among male members, she did not go there. She had not requested anybody else to search her daughter. Next day she had left for the Sikarhata Police Station which is about 1 mile (Kos) in the early hours. Only Kewal was with her. From the police station she went to Piro



Hospital and from there to Sadar Hospital. The doctor at Piro Hospital had treated her daughter and referred her for further treatment to Sadar Hospital. Her daughter was medically examined. Her daughter was treated for one and a half months at Sadar Hospital, Ara. The wounds of her daughter were stitched. She had handed over the lower garments of her daughter in the police station. She has also stated that Fulchandra had tried to escape, but the police had apprehended him. She has denied the suggestion that the accused Fulchandra had not committed the alleged offence on her daughter.

15. P.W.4 is the victim girl. She has stated in her examination-in-chief that the incident took place one year ago. She had gone to watch cinema going on in the village at night and she fell asleep while watching the film. Dara Paswan came and told her that her mother is searching her. He is having two names. However, she does not know his second name. He took her to the nearby *Koli* and committed the offence. He lay on her body and tore her private parts, which resulted into bleeding from her private parts. The witness, pointing towards her private part, deposed that blood started oozing from here. After committing the heinous crime, the accused fled away from the scene leaving her alone. She had fainted after the incident.



When she regained consciousness, she slowly stood up with the help of the wall, went home weeping and narrated the incident to her mother. Her mother took her to the police station and informed the police about the incident. She was medically examined and treated also. Her statement was also recorded before the learned Magistrate on which she had put her thumb impression.

15.1. In her cross-examination she has stated that the show was going on in a tent (*Samiyana*). So many persons were sitting near the place where she was sitting. She fell asleep while watching the movie. When she woke up, she found herself in the *Koli*. She was lying on the ground. A large amount of blood was spread on the ground. Even her clothes were blood-stained. Bleeding continued till she reached home, but bleeding had stooped by the time she went to the police station. She had gone to hospital from the police station. She cannot tell the time when she returned from hospital. Darogaji had taken her blood-stained clothes. She had stated about the incident only in the Court after stating it at the police station. When asked by the Court about the time gap, she maintained silence. She has stated that when she had come to the court, blood was oozing.



16. P.W. 5 is Namita Singh. She has stated that on 22.05.2013, she was posted as Judicial Magistrate 1st Class and had recorded the statement of the victim girl, aged about 8 years, D/o- Jokham Rajbanshi, R/o- Village and P.S. Sikarhata, Distt- Bhojpur on direction of C.J.M., Bhojpur at Ara. She recorded statement of victim in her language u/S- 164 Cr. P.C. The statement of victim girl is in her pen and signature. The same is marked Ext. 2. Victim's mother was with her at the time of recording statement.

17. P.W. 6 is Dr. Pushpa who has medically examined the victim girl. She has found the following injuries:-

“As per vaginal examination, Hymen was intact. There was complete perenial tear.

Viginal Swab taken and sent for microscopic examination. Swab and clothes worn by Savita Kumari was handed over police to send to P.M.C.H. Patna.

No other injury mark was found on any other part of victim. The vaginal & smear examination reveals no spermatozoa dead or alive. Plenty of R.C.B. was found.

X-ray pelvis shows Iliac apopyses not appeared. Epiplysis around hip joint not fused.

X-ray elbow shows Epiphyses not appeared.

X-ray wrist apiphyses not fused. So according to x-ray report her age is probably below ten years. This medical report is in my writing and signature. The same is marked Ext. 3.”

18. At this stage, it is relevant to clarify that though



in the deposition of P.W. 6, the sentence noted down is “Hymen was intact.”, however, in the medical certificate issued by P.W. 6, which is in her own pen and signature, she has written “Hymen not intact.”.

19. P.W. 7 Poonam Kumari is the Investigating Officer who was posted at Mahila Police Station on 20.05.2013. She has stated in her examination-in-chief that the clothes worn by the victim were stained with blood and semen. She prepared the Seizure List which is marked as Exhibit-4. She also searched the clothes and jeans pant worn by the accused in front of the witnesses and found blood stains on the lower legs of both his jeans pants. Further, it is stated that the accused had forcibly raped the victim girl in the street which was deserted. It is also stated that Parshuram Rajwar gave his left thumb impression on the seizure-list. The seizure list was marked as Exhibit-4/B. After this, an application was moved in the Court of the Chief Judicial Magistrate for recording the statement of the victim under Section 164 of Cr.P.C. The soil was seized by the F.S.L. team from the incident site which was exhibited. She requested the Jail Superintendent to convince the accused to have his blood examined.

19.1. In her cross-examination, she has stated that



a red coloured substance was seized from the black *salwar*. There was a blood like substance in the lower part of the blue coloured pant of the accused which was confiscated. A dirty white coloured towel (*Gamchhi*) was seized from the house of the accused in which stains like blood and semen were found. All the seized items were sent to the Forensic Science Laboratory, Patna. The clothes worn by the victim were also presented by Tunni Devi which was confiscated and a Seizure List was prepared and sent to F.S.L. Patna.

20. P.W. 8 Birendra Sah is an advocate clerk. He is witness to the F.I.R. He has simply identified the written information to be in pen and signature of the then S.H.O. of Sikarhata Police Station.

21. We have considered the submissions canvassed by the learned counsels for the parties. We have re-appreciated the entire evidence led by the prosecution. We have also perused the material placed on record.

22. It transpires from the record that *fardebayan* of the mother of the victim was recorded immediately when the victim came home weeping and informed that during the course of watching cinema, she fell asleep when accused Fulchandra Paswan took her to the *Koli* behind the house of Hakik Mian



and forcibly gagged her mouth and outraged her modesty. Thus, the F.I.R. was immediately lodged by the mother of the victim. It would further reveal that the informant, mother of the victim, has supported the case of the prosecution. Even the statement of the victim girl, who is aged about 8 years, was recorded by the police under Section-161 of Cr.P.C. The victim was immediately sent for medical examination. Further, statement of the victim under Section-164 Cr.P.C. was also recorded by the Magistrate. The Magistrate who had recorded the statement of the victim has also given her deposition before the Trial Court. The victim has also given her deposition before the Court. The victim has fully supported the case of the prosecution.

23. At this stage, it is relevant to note that in the case of **Rai Sandeep Vs. State (NCT of Delhi)**, reported in **(2012) 8 SCC 21**, the Hon'ble Supreme Court has observed at para-22 as follows:-

"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the



truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the crossexamination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and



based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

24. From the aforesaid observation made by the Hon'ble Supreme Court, it can be said that if the witness, who is the victim, is considered as a sterling witness, only relying upon the same, conviction can be recorded and no further corroboration is required.

25. We have gone through the statement of the victim recorded under Section-164 Cr.P.C. and the deposition given by the learned Magistrate who has recorded the same as also the deposition given by the victim and we are of the considered view that, in the present case, P.W. 4, the victim, can be termed as a sterling witness.

26. Even in the medical certificate issued by the doctor, it has been observed that Hymen of the victim girl was not intact. As such, we are of the view that the medical evidence also supports the version given by the victim. Thus, the medical evidence corroborates the case of the victim.



27. It is important to observe at this stage that the victim, who is aged about 8 years, and her mother, i.e. the informant, have no reason to falsely implicate the appellant herein. The accused has also not raised any defence that he has been falsely implicated. No suggestion was made during cross-examination of the witnesses nor there is any explanation in the statement of the accused recorded under Section-313 Cr.P.C.

28. From the deposition of the Investigating Officer also, it is revealed that he had collected the blood from the place of occurrence and sent the blood seized from the place of occurrence along with the blood-stained clothes of the victim for necessary analysis to the F.S.L., Patna. Thus, from the deposition given by the Investigating Officer also, the version given by the victim girl finds fully substantiated and supported.

29. We have also gone through the reasoning recorded by the Trial Court while passing the impugned judgment and order and we are of the view that the Trial Court has not committed any error. Hence, no interference with the findings recorded by the Trial Court is required in the present appeal.

30. Accordingly, the present appeal is dismissed.

31. Before parting with the appeal, we record our



appreciation for the able assistance rendered by **Ms. Priya**,
learned *Amicus Curiae*.

32. The Patna High Court Legal Services
Committee is, hereby, directed to pay **₹ 3,000 (Rupees Three
Thousand)** to **Ms. Priya**, learned *Amicus Curiae* as
consolidated fee for the services rendered by her.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

K.C.Jha/-

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