

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.292 of 2017

Arising Out of PS. Case No.-77 Year-2015 Thana- MORKAHI District- Khagaria

Prakash Kewat, Son of Banarsi Kewat, Resident of Village-Sahorwa Police Station Morkahi, District Khagaria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vivekanand Singh, Advocate
		Mr. Hira Jha, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 05-04-2024

Heard Mr. Vivakanand Singh learned advocate
for sole appellant and Mr. Bipin Kumar, the learned APP
for the State.

2. The appellant has been convicted under
Sections 376, 302 and 376A of the Indian Penal Code
and Section 4 of the POCSO Act, 2012 *vide* judgment
dated 05.01.2017 passed by learned Additional Sessions
Judge-I-cum-Special Judge, Khagaria in POCSO Case No.
21 of 2015/ Registration No. 279 of 2015, arising out of



Morkahi P.S. Case No. 77 of 2015, GR No. 2437 of 2015.

3. By order dated 10.01.2017, he has been sentenced to undergo RI for the remainder of his life under Section 376A of the IPC. No separate sentence has been imposed under Sections 302 and 376 of the IPC. Under Section 4 of the POCSO Act, 2012 he has been sentenced to undergo life imprisonment, to pay a fine of Rs. 25,000 and in default of payment of fine to further suffer RI for one year.

4. The entire amount of fine has been directed to be paid to the family of the victim/deceased.

5. The Trial Court has also recommended for payment of compensation to the family of the victim under section 357A of the Cr.P.C.

6. A four year old girl is alleged to have been raped and killed by the appellant. The FIR was lodged by the mother (PW-8) of the deceased on 05.10.2015 at about 3:00 P.M. in the day. She had alleged that on



04.10.2015 at about 7:30 P.M., when she along with her four year old daughter (deceased) had gone to attend to the call of nature, the appellant forcibly took away the child from her possession. When she protested, she was given a push. All this was done on gun point. The appellant is then said to have run away with the child. PW-8 made hue and cry as a result of which many persons of the village arrived at the place of occurrence. However, taking advantage of the darkness, the appellant ran away from the place of occurrence.

7. She has further alleged that the appellant committed rape on her daughter and, thereafter, killed her and threw her dead body in the paddy field which was inundated with water. The dead body was found in the field, whereafter the FIR was lodged.

8. On the basis of the afore-noted written report, a case *vide* Morkahi P.S. Case No. 77 of 2015 dated 05.10.2015 was instituted for investigation against the appellant for offences under Sections 302 and 376 of



the IPC. Later, Sections 3/4 of the POCSO Act, 2012 was also added.

9. During the course of trial, the Police submitted the charge-sheet against the appellant, whereupon he was put on Trial.

10. The Trial Court, after have been examined nine witnessed on behalf of the prosecution and none on behalf of the defence, convicted and sentenced the appellant as aforesaid.

11. The informant (PW-8) has supported the accusation during the Trial. At the Trial also, she has narrated the manner in which the deceased was snatched from her and taken away by the appellant. When she tried to protest, she was pushed to the ground. On her cries, Jeera Devi (PW-1), Hiralal Kewat (PW-3), Jitendra Kumar Kewat (PW-7), Arun Kewat (PW-2), Prakash Kewat, son of Lakho Kewat (PW-4) and other villagers came. While this was happening, the appellant raped and killed the deceased and threw her dead body. When a



search was made for the daughter of the PW-8, her naked dead body was found thrown in the field of one Kishun Kewat. She was bleeding from her private parts. The police was informed, which came and took the dead body to the police station and from there to the hospital.

12. Afore-noted persons, who had come to the place of occurrence, have also supported the prosecution case, though as persons who heard from PW-8 about the appellant having taken away the victim/deceased.

13. Jeera Devi (PW-1) also had gone to attend to the call of nature. She heard the cries of PW-8, who told her that the appellant had taken away her four years old daughter. PW-1 had seen the dead body at about 9 O'clock in the night in the paddy field. She had also seen blood coming out from her private parts.

14. Arun Kewat (PW-2) was at his *Darwaja* when he heard the cries of PW-8. He went to her house when he was informed that her daughter was snatched away from her and then raped and killed by the



appellant. He had also seen the dead body and had observed that she was bleeding from her private parts. He has confirmed about the presence of other witnesses, viz., PWs 3, 4, 5 and 7. The dead body was brought home and from there to hospital. At the trial, he identified the appellant.

15. Similarly, Hiralal Kewat and Prakash Kewat (PWs. 3 and 4) also, though have not claimed to be the eye-witness, but had learnt about the occurrence. In fact, Prakash Kewat (PW-4) had seen the appellant running away, wearing a vest and a trouser which was blood-stained. He was also carrying a weapon in his hand.

16. Vidyanand Kewat (PW-5) was told by his wife Savitri Devi (PW-8) about the occurrence.

17. Jitendra Kumar Kewat (PW-7) had seen the appellant running away from the place of occurrence. Though, except for PW-8, none had seen the occurrence but two of the witnesses had seen the appellant running



away at the time when the occurrence is said to have taken place.

18. Rest other witnesses, on the information provided by PW-8, had visited the place where the dead body was lying. All of them had observed that the victim was bleeding from her private parts.

19. The postmortem examination was conducted by Dr. Kamla Kant Singh (PW-6) who found the entire body of the victim soiled with sand. There were bruises on both sides of the neck of 1"X1" dimension. On examination of private parts, the vaginal wall was found to be lacerated. The hymen was ruptured. There were blood clots in the vaginal area and on the thigh region just below the vagina. The vaginal swab was sealed in a vial and was sent to Medical College, Bhagalpur for spermatozoa examination. The cervical vertebra, especially the 2nd 3rd and 4th one were found to be broken and fractured. The time of death was placed at 24 hours from the time of postmortem examination.



20. A supplementary report also came forth which contained the report of the vaginal swab microscopic examination for spermatozoa. Surprisingly, no spermatozoa was found. PW-6, therefore, opined that it was difficult to say whether rape had been committed or not. However, the ruptured hymen and lacerated vaginal wall of a four year old girl was a definite evidence of a brutal sexual onslaught on the victim. The death was because of a traumatic spinal shock.

21. The Investigator of this case (PW-9) had taken the statement of most of the witnesses who were examined at the trial. The place where the dead body was found, was the paddy field of Jeera Devi and Kishun.

22. Mr. Vivekanand Singh, learned Advocate for the appellant, has vehemently argued that though the look of the case is bad but if analysed deeply, it is only the deposition of PW-8/ the mother of the victim, which has formed the basis for conviction. It appears to be rather unusual, Mr. Singh has argued, that in the night, a



four year old girl would be snatched by someone and would be taken away and the mother or other family members would not immediately go to the Police Station to lodge any case. The dead body was found at about 9:00 PM. This was too short a time for the appellant to have executed the crime of rape and murder both. If the appellant was seen running away from the place of occurrence and many villagers had spotted him at about the same time when PW-8 had been crying for help, there was every possibility of the appellant having been apprehended by the villagers.

23. That not having being done, it appears that after the dead body was recovered, a case was thought of by PW-8, in collusion with the local Police and the appellant has been framed.

24. In order to buttress this contention, Mr. Singh has drawn the attention of this Court to the fact that the occurrence took place sometimes at 7:30 P.M. on 04.10.2015. The inquest report was prepared at



about 7:10 in the morning of 05.10.2015. The postmortem examination was conducted on 05.10.2015 but at 12:00 PM. The FIR was lodged much after the inquest and the postmortem at around 3:00 PM in the day on 05.10.2015.

25. In this background, it has been argued that the lodging of the FIR after the postmortem examination makes the prosecution case highly doubtful. He stresses the argument that it was too short a time for anybody to have consummated such crime and escape from the place.

26. If the police had come to the place where the dead body was found at about 7:00 in the morning of 05.10.2015, the FIR should have been lodged immediately but this would have happened only if PW-8 had made a correct statement. He, therefore, infers that only after the injuries on the deceased was confirmed that the police thought it best to close the case by saddling the allegation on the appellant.



27. The other ground urged on behalf of the appellant is that even PW-8 did not see the actual part of the occurrence. She had gone to ease herself in her field. The dead body was found somewhere near in the field of her parents-in-law. It is expected that the lands of the family would be at one place only. If the appellant had snatched the baby and had run away, it was only natural for the mother to have chased the miscreant, notwithstanding the fact that he was armed with a weapon. Even if she had not chased, the dead body was thrown only nearby. This, therefore, makes the prosecution case doubtful that the appellant was the person who had snatched the baby and had raped and murdered her.

28. The deceased, for a sure, died a homicidal death. Her vertebra was fractured; perhaps her neck had been twisted. Some attempt definitely had been made to physically violate her or else there would not have been laceration of vaginal wall and rupture of hymen. All this



would have taken time.

29. The sequence of events do not indicate that the victim was taken to some desolate place, far away from the site of the mother (PW-8), then raped, murdered and the dead body brought back to a field nearby for it to be disposed off. This aspect of the matter has been completely overlooked by the Trial Court.

30. Mr. Bipin Kumar, learned Additional Public Prosecutor, on the other hand, has argued that there is nothing on record to indicate any enmity of the family of PW-8 with the appellant for her to falsely name him. There is no such statement made by the appellant before the Trial Court under Section 313 Cr.P.C.

31. The three documents of cases of yesteryears do not come to the rescue of the appellant. No effort has been made by the defence to explain away those FIRs of 2006 to mitigate the rigors of the prosecution version.

32. That apart, it has been submitted on behalf of the State that the statement made by PW-8 to the



other witnesses was almost contemporaneous with the act of snatching away of the baby (deceased) by the appellant. Within one and half hours, the dead body was found. It is a mystery as to where the occurrence had taken place and why the appellant chose to bring the dead body to dump it in a field nearby. Nonetheless, there is nothing in the cross-examination of anyone of the witnesses to demonstrate that they were only siding with PW-8 and were narrating the same story which was told to them by her.

33. Considering this aspect of the matter, it has been argued that the Trial Court has rightly convicted the appellant and has sentenced him to undergo RI for the remainder of his life as such punishment is mandated under Section 376-A of the IPC.

34. After having heard the learned counsel for the parties and having examined the depositions of all the witnesses in detail, we find that the prosecution has been able to prove the case beyond all reasonable



doubts. That the dead body was found not in the field of PW-8 but in the field of Jeera Devi and Kishun who are none-else but the parents-in-law of PW-8, completely dilutes the argument of the appellant.

35. Though initially, we were flummoxed at the finding of the dead body by the villagers at somewhere near the place where she was snatched but when the evidence was analysed in detail, it clearly appeared that the appellant was armed with a weapon and when a protest was made by PW-8, she was pushed behind. The victim was taken away. One of the witnesses has stated that PW-8 was crying in her house and was complaining about the appellant having taken away her daughter. Later, two of the witnesses saw the appellant running away also. They do not appear to be chance witnesses as those witnesses are residing nearby and had responded to the call of PW-8.

36. It was in this context that a search was made by all the villagers including PW-8 and the dead



body was found in a paddy field which was full of water.

37. The postmortem examination confirms the fact that the deceased died because of brute force applied on her.

38. We are not happy at the Trial Court not awaiting the forensic report and no attempt having been made by the Court to procure the same. Nonetheless, the medical evidence confirms that the deceased was attempted to be raped, notwithstanding the vaginal swab not showing any signs of spermatozoa; dead or alive. The ruptured hymen and lacerated vaginal wall of a four year old girl is a clear indication of sexual assault.

39. The argument about the doubtful nature of identification of the appellant is also not sustainable in the eyes of law. The appellant is not an outsider but a local villager. It is not very difficult for a person to be identified from close quarters if one is known from before, even if the source of light is not sufficient.

40. All this apart, we have not found anything



on record which would even remotely suggest that there was a false attempt that framing the appellant. There is no enmity on record.

41. There is no land dispute of the family of the deceased with the appellant. However, the Investigator has only casually stated that he had learnt about some land dispute between the family of the appellant and the deceased. If it were so, it ought to have been stated by the appellant in his 313 statement.

42. Considering the entirety of the case, we do not find the judgment of the Trial Court to be any perverse or bad in the eyes of law or beyond the evidence on record. The information provided by PW-8 to other witnesses was almost contemporaneous to the act and, therefore, the statements of those witnesses before the Trial Court was admissible under Section 6 of the Evidence Act.

43. However, we do find that no effort was made by the Trial Court to know about the appellant in



any greater detail. Except for the fact that he was of 35 years of age at the time of the occurrence, no other circumstance was factored in by the Trial Court in sentencing the appellant for the remainder of his life. The family background of the appellant; his liabilities and whether he had shown any sign of transformation for the last ten years in jail, have not been looked into.

44. It is of real importance for a Trial Court to have its hands on such aspects of the matter before saddling the highest form of punishment to an accused.

45. Taking this aspect into account, we find that interest of justice would be sufficiently met if the period of sentence of the appellant is reduced to clear 20 years in jail.

46. We order accordingly.

47. Rest of the liabilities imposed upon the appellant by the Trial Court does not require any interference.

48. The appeal is, thus, dismissed with minor



modification in the sentence. To clarify further, the sentence for the remainder of life is reduced to a sentence of 20 years.

49. The records of this case shall also be transmitted to the Trial Court forthwith.

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

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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