

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.318 of 2014**

Arising Out of PS. Case No.-26 Year-2012 Thana- CHAND District- Kaimur (Bhabhua)

Sanjay Khatik @ Manju Khatik Son of Antu Khatik Resident of village-  
Chanda, P.O. P.S- Chand, District- Kaimur Bhabhua

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

For the Appellant/s : Ms. Anukriti Jaipuriyar, *Amicus Curiae*

For the Respondent/s : Mr. Bipin Kumar, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA**

**and**

**HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**

**C.A.V. JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA)**

**Date : 02-04-2024**

This appeal is directed against the judgment of conviction dated 24.03.2014 and order of sentence dated 28.03.2014 passed by the *Ad hoc* Additional Sessions Judge-I, Bhabhua, Kaimur in Sessions Trial No. 301 of 2012/2512 of 2014, whereby and whereunder the appellant has been convicted for the offence punishable under Section 376 (2) and Section 307/34 of the Indian Penal Code. He has been sentenced to undergo life imprisonment with fine of Rs. 20,000/- for the offence under section 376(2) of the Indian Penal Code and to undergo rigorous imprisonment for twelve years with fine of Rs. 20,000/- for the offence under section 307/34 of the Indian Penal Code.

2. The prosecution case, in brief, is that on



28.04.2012 at 3.00 pm. the *fardbeyan* (Exhibit-3) of the informant (P.W. 2) was recorded at Camp Village, Chanda by S.I. Ram Rahan Singh (P.W. 6) alleging therein that his Sasural is in Village-Chanda where he is living with his children after constructing hut. On 27.04.2012 at 9.00 pm when he slept along with his wife outside his house and his son and daughter were sleeping on the floor in courtyard of the house, his neighbour Sanjay Khatik @ Manju Khatik aged about 32 years entered inside the house and took away his daughter aged about 8 years with bad intention in his lap and took her to field situated in North Eastern side of the Village belonging to Late Mangal Sah where Anil Khatik was also present. After reaching there his daughter was thrown on the floor thereupon the girl woke up and tried to cry but Sanjay Khatik @ Manju Khatik after assaulting her put her under threat and after opening her underwear committed rape due to which the private part of her daughter was torn and bleeding started. When the girl started crying then Sanjay Khatik @ Manju Khatik put towel in her mouth and Anil Khatik also tried to commit rape upon her and to kill his daughter by putting towel in the neck. The mark of the tied towel is also present in the neck. The informant further claimed that in the night at 3.00 am. he awoke for urinating then



he found his daughter missing, thereupon he informed his wife and in the course of search his daughter was found in unconscious condition in the field of Late Mangal Sah. Thereupon he brought his daughter at his house. When the victim girl regained consciousness then on inquiry she informed that Sanjay Khatik @ Manju Khatik and Anil Khatik have committed the offence. The informant claimed that his daughter has been raped by Sanjay Khatik @ Manju Khatik and Anil Khatik and tried to kill her by tying towel in her neck. On the basis of this *fardbeyan* formal first information report being Chand P.S. Case No. 26 of 2012 (Exhibit-4) was instituted against the appellant and Anil Khatik.

3. The victim's name has been concealed in the present judgment and she has been referred to as the victim for maintaining privacy of her identity to protect her dignity.

4. After investigation, the police submitted charge sheet against both the accused persons under Sections 457, 323, 307 and 376 of the I.P.C. Subsequently, Anil Khatik was found juvenile and as such, his case was sent to Juvenile Justice Board and the charges against the appellant was framed under Section 307/34 read with section 376 (2) of the I.P.C.

5. During trial, the prosecution has examined



altogether 7 witnesses. P.W. 1 is the maternal grandfather of the victim. P.W. 2 is the informant and father of the victim. P.W. 3 is the victim herself. P.W. 4 is mother of the victim. P.W. 5 is Pathak Alok Kaushik, Judicial Magistrate, Bhabua, who had taken statement of the victim girl under Section 164 Cr. P.C. P.W. 6 Ram Gahan Singh is the Investigating Officer of the case and P.W. 7 Kiran Singh is the doctor, who conducted the medical examination of the injured victim.

6. In order to establish the charge, the prosecution has examined following documents as Exhibits:-

|                  |                                                                    |
|------------------|--------------------------------------------------------------------|
| <i>Exhibit-1</i> | <i>Signature of maternal grand father on the seizure list.</i>     |
| <i>Exhibit-2</i> | <i>Statement of the victim under Section 164 Cr. P.C.</i>          |
| <i>Exhibit-3</i> | <i>Fardbeyan.</i>                                                  |
| <i>Exhibit-4</i> | <i>Formal F.I.R.</i>                                               |
| <i>Exhibit-5</i> | <i>Handwriting and signature of Mithilesh on the seizure list.</i> |
| <i>Exhibit-6</i> | <i>Medical report of the victim girl.</i>                          |

7. The statement of the accused persons recorded under section 313 of the Code of Criminal Procedure is of complete denial.

8. The defence has not examined any witness in support of its case.

9. In the instant appeal, the decision of the trial court has been challenged mainly on the following grounds :



All the witnesses are members of the same family, there is no independent witness. The incident took place at night, there is no source of light, in such a situation the identification of the accused is doubtful. All the witnesses except the victim are hearsay witnesses. The clothes of the victim were not presented in the court. The investigation officer did not find any traces of blood at the place of occurrence. There is already a land dispute between the two parties. The victim's injuries were caused by the branches of the tree while climbing up and climbing down from the tree.

**10.** The prosecution opposed the appeal and submitted that the decision has been passed in a logical manner after discussing the oral as well as documentary evidence and hence, this appeal is fit to be dismissed.

**11.** Heard Ms. Anukriti Jaipuriyar, learned counsel appearing as *amicus curiae* and learned Additional Public Prosecutor appearing for the State and perused the record.

**12.** Before reaching to any conclusion, it is necessary to re-appreciate the evidence of witnesses.

**13.** P.W. 1 maternal grandfather of the victim, in his evidence, has stated that when on hearing *hulla* he went to the hut of his daughter (mother of the victim) then she said that



Manju Khatik and Anil Khatik have taken away the victim. When the witness asked the victim, she told that both of them have committed rape upon her. She further said that the inspector came and seized the underwear of the victim which had a lot of blood on it. This witness has identified his signature (Exhibit-1) on the seizure list.

**14.** P.W. 2, the father of the victim, in his evidence, has stated that all his five children were sleeping in the courtyard at night. In the morning, when he went to wake up the children, he did not find the victim. While searching, she was found in an unconscious condition in the field of Mangal Shah. There was a lot of blood coming out from her private parts and her underwear was drenched in blood. After two hours she regained consciousness and she told that Manju @ Sanjay picked her up and took her to Mangal Shah's field and committed rape upon her. Police came and got her admitted in the hospital where she remained for 20-22 days. After ten days, she also gave her statement in the court.

**15.** P.W. 3, who is the victim, aged 7-8 years, in her evidence has stated that she was sleeping in the courtyard with her brothers and sisters. Manju and Anil took her away. Manju stuffed a cloth in her mouth and Anil put a *gamachha* around



her neck and then both of them rapped her. At 8.00 in the day she regained consciousness at home then she told this incident to his father, mother and other people of the village. This witness also identified both the accused persons. She also said that her statement was recorded before the Judge and she was treated at Bhabhua Hospital.

**16.** P.W. 4 is the mother of the victim. In her evidence, she has stated that her husband told her that the victim is not in the courtyard. After this they started searching for her. After some time, her husband brought the victim, she was unconscious and there was a lot of blood in her underwear. There was a bite mark on her cheek. After one and a half hour, the victim regained consciousness then she told that Sanjay Khatik and Anil Khatik took her away and committed rape with her. The police came at 12.00 in the day, they interrogated her, took her signature and the signature of her husband on the paper. The victim was treated in hospital where she remained for 20 days. She also stated that altogether 8 stitches were given to the girl.

**17.** P.W. 5 Pathak Alok Kaushik, is the Judicial Magistrate, who recorded the statement of the victim under section 164 of the Code of Criminal Procedure. The witness has



proved the statement (Exhibit-2) of the victim.

**18.** P.W. 6, Ram Rahan Singh, the Investigating Officer of the case, in his evidence has stated that he received information that a minor girl has been raped. He reached the spot, recorded the statement of the victim's father, read it out to him, took his thumb impression, also took the thumb impression of the victim's mother as a witness and also put his signature on the same. This witness has proved the *fardbeyan* (Exhibit-3). On the basis of the *fardbeyan*, formal first information report was registered. The witness has proved the formal first information report (Exhibit-4). He seized the blood stained underwear of the victim and prepared the seizure list. He also proved the seizure list (Exhibit-5). The witness has proved both the places of occurrence. He got the statement of the victim recorded under section 164 Cr. P.C. He received the medical report and submitted charge-sheet against the accused persons.

**18.1.** It is pertinent to mention here that on the underwear of the victim as per report no. 850 of 2012 dated 24.08.2012 of Director, Forensic Science Laboratory Bihar, Patna, which is on record, the human blood and semen have been detected.

**19.** P.W. 7 Dr. Kiran Singh, is the doctor who



examined the victim and found the following injuries :

*On external examination nail mark present on left side of forehead above eyebrow, irregular abrasions, scratches in various shape and sizes present over both sides of face, extensive abrasions blackish reddish color found over both sides in front of neck, irregular abrasions in various shapes, sizes present over back of the chest and back.*

*On examination of genitalia and its neighbourhood area - first of all vagina swab was taken and sent for pathological examination. Pathological report shows that spermatozoa is not found either dead or alive, only epithelial and pus cells are present, hymen membrane was recently ruptured with profuse bleeding, perineum is massively lacerated with profused bleeding muscle deep size about 1½” x 1½” x muscle deep extending from vagina to anal canal which was ruptured under G A. Touching of the wound was painful and tender.*

*In her opinion:-*

*i. Above mentioned injuries are simple in nature except perineal injury which is grievous in nature caused by*



*hard and blunt and scratching object and approximately within 24 hours.*

*ii. On the basis of above mentioned finding allegation of rape cannot be denied.*

The doctor has proved the injury report (Exhibit-6).

**20.** P.W. 8 Dr. Kameshwar Nath Tiwary, is the member of the Board which had assessed the age of the victim. In the opinion of the Board the victim was aged 7-9 years. He has proved the report (Exhibit-7).

**21.** On perusal of the aforesaid evidence, it can be said that there is uniformity in the statement of witnesses, there is no contradiction, and even if there is something, that is negligible.

**22.** Now, if all the above evidence are taking into consideration together then it becomes clear that on the date and time of the occurrence, the accused alongwith a companion committed rape with victim who was a minor girl of 7-8 years. At the same time, tying a cloth around the neck of the victim and tightening, stuffing a cloth in the mouth and then picking her up and throwing her on the ground by both the accused proves that both had the intention to kill the victim. Luckily, she survived. Thus, from the above evidence charges under Sections



376(2) and 307/34 of the Indian Penal Code against the accused are well proved.

**23.** All the arguments advanced by the appellant in its defence have no force and are rejected. The witnesses being members of the same family or there being no independent witness do not materially affect the trial. So far as the source of light is concerned, if the victim recognizes the accused from before then she will definitely recognize him even in the dark where the accused is close to her. If there are some minor lacunae in the investigation, it will not affect the overall trial. The argument of the appellant that except the victim all the witnesses are hearsay witnesses is also not acceptable. The victim gives them the details of the incident as soon as she regains consciousness. Apart from this, the facts like the victim was not found at home at night and when searched in the morning, she was found unconscious in an injured condition, has been said by all the witnesses in one voice which puts the entire incident in one chain.

**24.** In the conclusion, it can be said that the decision of the Trial Court is based on the analysis of evidence. It is affirmed. There is no force in this appeal.

**25.** So far as, the orders of sentence wherein the Trial



Court has ordered both the sentences to run separately one after the other is concerned, it is modified and ordered that both the sentences shall run concurrently.

26. The appeal, accordingly, stands disposed of.

27. We put on record special thanks for Ms. Anukriti Jaipuriyar, learned advocate, who was appointed as an amicus curiae in this case, for rendering full assistance to the Court in hearing the appeal.

28. The Patna High Court Legal Services Committee is, hereby, directed to make payment of Rs. 7,500/- (Seven thousand five hundred) to Ms. Anukriti Jaipuriyar, the learned *amicus curiae*, as consolidated fee for the services rendered by her.

(Arvind Srivastava, J)

I agree

Sunil Dutta Mishra, J

(Sunil Dutta Mishra, J)

shailendra/-

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