

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.90 of 2021**

Arising Out of PS. Case No.-30 Year-2018 Thana- MAHILA P.S District- Supaul

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RAMESHWAR SADA S/o Late Birbal Sada R/o village- Tharha Barmotra,
P.S.- Balua Bazar, District- Supaul

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Arun, Advocate Mr. Anjani Parashar, Advocate Ms. Kanika, Advocate Mr. Dhananjay Kumar Tiwary, Advocate
For the State	:	Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 20-06-2024

The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as ‘Code’) challenging the judgment of conviction dated 17.02.2020 and order of sentence dated 25.02.2020 passed by learned Additional District and Sessions Judge-Ist, Supaul in POCSO 08/2018 (CIS-04/2018), arising out of Mahila P.S. Case No. 30 of 2018, whereby the concerned Trial Court has convicted the present appellant for the offences punishable under Section 376(D)/341/323 of the Indian Penal Code (hereinafter referred as the I.P.C.) and Section 4/6 of the POCSO Act and sentenced him to



undergo R.I. for 1 month under Section 341 of the I.P.C., R.I. for 1 year under Section 323 of the I.P.C., R.I. for life till his last breath under Section 376(D) of I.P.C. and a fine of Rs. 1 lakh and no sentence under Sections 4/6 of the POCSO Act has been passed because severe punishment has been awarded under I.P.C.

2. The prosecution case, in a nutshell, is as under:-

2.1. On 04.03.2018, at about 04:30 pm, the daughters of the informant, aged 15 and 10 years, went to cut grass in the northern side of the village. Then, her younger daughter came running and told that the appellant and the other co-accused Devchandra Sada forcibly took the victim in the banana orchard. When the informant and other family members reached the banana orchard, they found the victim in an unconscious condition on the ground without her clothes and the appellant with other co-accused had fled away. Then, the informant with the help of her family members brought the victim at home and when she regained her consciousness, she stated about the occurrence.

2.2. After registration of the F.I.R., the Investigating Officer started the investigation and during the course of the investigation, he had recorded the statement of the witnesses and thereafter filed the charge-sheet against the appellant/accused before the concerned Magistrate Court. As the case was



exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Sessions Court where the same was registered as POCSO 08/2018 (CIS-04/2018).

3. Heard Mr. Arun, learned counsel for the appellant assisted by Mr. Anjani Parashar, Ms. Kanika and Mr. Dhananjay Kumar Tiwary and Mr. Bipin Kumar, learned A.P.P. for the Respondent-State.

4. Learned counsels for the appellant submits that there are major contradictions and discrepancies in the deposition as well as in the statement of the victim recorded under Section 164 of the Code. It is submitted that the victim has stated in her statement given before the Magistrate under Section 164 of the Code that one Devchandra Sada committed rape on her in a maize field. Thereafter, she was taken to banana orchard. At that place, the present appellant committed rape on her. However, while giving deposition before the Court, in the examination-in-chief, she has stated that both the accused committed rape on her in the maize field. It is further pointed out by the learned counsel that, during cross-examination, she has stated different story wherein she has stated that both the accused committed rape on her in the banana orchard. It is further submitted that, as per the case of the victim, Devchandra committed rape on her for one hour and



thereafter the present appellant committed rape which continued for two hours. However, the story of the prosecution is not supported by the medical evidence. Learned counsels, at this stage, has referred the deposition given by PW-3 Dr. Nutan Verma who has examined the victim. It is submitted that the Doctor has specifically opined that there is no sign of rape found. Learned counsels, therefore, urged that the present case is the case of false implication and the version given by the victim is not required to be believed. The said witness cannot be termed as a sterling witness and, therefore, only on the basis of the said deposition, the conviction cannot be recorded.

5. Learned counsels would thereafter submit that even, as per the case of the prosecution, victim was studying in school despite which the investigating agency has failed to produce any documentary evidence with a view to prove the age of the victim.

6. It is thereafter contended that, while recording the statement of the accused under Section 313 of the Code, the Court has not put all the material against the appellant/accused. The said can be said to be material irregularity. Learned counsel, therefore, urged that looking to the aforesaid facts and circumstances of the present case, the present appeal be allowed and the impugned order be quashed and set aside.



7. On the other hand, learned A.P.P. has opposed this appeal. It is contended that the victim has specifically named the present appellant and allegations are levelled against the appellant. The victim has also specifically alleged against the appellant while giving the statement under Section 164 of the Code. It is submitted that merely because the version of the victim is not supported by the medical evidence, benefit of the same may not be given to the appellant. It is also submitted that relying upon the deposition given by the victim only conviction can be recorded and, therefore, the Trial Court has not committed any error while passing the impugned judgment and order. Learned A.P.P., therefore, urged that this appeal be dismissed.

8. We have re-appreciated the entire evidence led by the prosecution before the Trial Court. We have also considered the submissions made by the learned counsels appearing for the parties. It would emerge that, PW-1 Hafeena Khatoon has stated in her examination-in-chief that, while she had gone to earn wages, her daughter had gone to cut grass in the maize field. Her youngest daughter came crying to her at 04:30 pm and told her that Devchandra and Rameshwar had beaten her and drove her away and took her sister in the maize field by tying her mouth. Then she went out looking for her in the maize field but did not find her



there. Then she went to the banana orchard and found her daughter lying naked in an unconscious state. Then she picked up her clothes and made her wear and then she saw that her private parts were bleeding. When she could not pick up her daughter, she informed her husband who came and took both of them to home. After two hours, when the victim regained consciousness, she told them that both Rameshwar and Devchandra tied a cloth around her mouth and took her to the maize field. Then, both of them took off their clothes and the clothes of the victim and then raped her one by one.

8.1. In her cross-examination, she has stated that she had testified before Mahila Thana two days after the incident. She was informed about the incident by her younger daughter. When she found the victim in an unconscious state, she was frothing with her mouth and her urinary tract was bleeding. Later, she had stated that she found her daughter in an unconscious state in the banana orchard. She has stated that she saw the victim in an unconscious state amidst the banana orchard. Her husband reached there five minutes after she had reached there and then both of them brought their daughters to their home while carrying the victim girl on his shoulders. She had stated that she brought her daughter at 10:00 in the night. Two hours later, her daughter regained her consciousness



and informed them about the occurrence. She has also denied the fact that her husband and other fourteen accused persons entered the house of Somi Sada and looted the house and used words indicating their case and molesting the female members of their family.

9. PW-2 is the victim who had deposed in her examination-in-chief that on the day of incident, she had gone to cut the grass in the maize field. Devchandra and Rameshwar came there and tied a cloth around her mouth and then slapped her sister and drove her away. Both of them committed raped upon her one after another. They removed her trousers and clothes and also removed their own clothes and then committed rape on her. After that, her lower abdomen started aching. Blood was oozing out of her private parts and then she fainted. Later, she told the whole incident to her parents. She has also stated that she got enrolled in the school where she had learnt writing.

9.1. In her cross-examination, she had deposed that her younger sister accompanied her to cut grass. She had no knowledge about the name of the person in whose field she went to cut the grass. She has also stated that it took about 3-4 hours to walk from home to that field. Both the accused came from behind where she was cutting the grass, tied her mouth with a towel and



then took her to the banana field. The banana orchard is situated at a distance from an hour from the maize field where both of them committed rape upon her. Devchandra was the first person who had committed rape on her for an hour. Then, Rameshwar committed rape on her for two hours while threatening her with a knife. When both of them committed rape on her, she became unconscious. She has stated that she regained consciousness at 12:00 in the night and then informed her parents about the incident. She has also stated that she was directly enrolled to Class-V. She was interrogated by the Police four days after the incident.

10. PW-3 Dr. Nutan Verma was posted at Sadar Hospital, Supaul as a Female Medical Officer. The victim girl was examined by the Medical Board in which she was also a member. The internal examination of the victim was done by her and it was found that:-

“No fighting sign fine or any sign of rape found.
Deep vaginal swab taken in a sterile vial and sent to Sadar Hospital Supaul for patho examination.”

10.1. In her cross-examination, she has stated that this is not a case of rape.

11. PW-4 Md. Daud has stated in his examination-in-chief that his younger daughter informed them that Devchandra



caught his elder daughter and took her to the maize field and committed rape upon her. Later, he took her to banana orchard and there Rameshwar Sada committed rape on her. When his wife went to see his daughter, she found that she was in a bad condition and was bleeding. When he reached there, he also saw that the blood was oozing from her private parts. Then they picked the victim girl and brought her home. When the victim girl regained consciousness at 12:00 am, she told the name of Devchandra and Rameshwar Sada.

11.1. In his cross-examination, he has stated that he was informed about the incident by his younger daughter. When he found his daughter, she was lying unconscious and was naked. He cannot tell as to who had made his daughter wear clothes. He states that his wife must have dressed his daughter. Then, he picked her up and brought her home. The clothes worn by his daughter were confiscated by the Police and a Seizure List was prepared.

12. PW-5 Maryam Khatoon is the sister of the victim girl. She had stated that she along with her sister went for cutting grass. Rameshwar and Devchandra thrashed her and then chased her away from the maize field and took her sister away. She had no knowledge as to what had been done in the maize field. After



coming from there, she informed her mother. Her father and mother took her sister to her house in an unconscious condition. When the victim girl gained consciousness in the morning, she told them about the incident of rape.

12.1. In her cross-examination, she had stated that the victim is her elder sister. Both the accused had chased her away before taking her sister to the fields. She came running to the house and informed her mother. She is not the witness to the occurrence which took place with the victim. Her sister explained to her that her mouth was tied by Devchandra with a towel.

13. PW-6 Premlata Bhupashree is the Investigating Officer who was posted as an S.H.O. in Mahila P.S. at Supaul on 06.03.2018. After taking charge of the investigation, she confiscated the green coloured *salwar* of the victim which was stained with blood and semen. After that, she got the victim medically examined and inspected the place of occurrence. The first spot of occurrence is a maize field. The place where the alleged occurrence is said to have been committed, it was found that plants of maize crop were damaged. After that, she made the inspection of the second spot of occurrence which is the banana orchard where also signs of grasses trampled by feet have been found. Later, she has stated that after getting the girl's statement



recorded under Section 164 of Cr.P.C. and after having obtained the permission from the Court, she sent the seized pyjamas of the victim to the F.S.L., Patna for its examination.

13.1. In her cross-examination, she has stated that the place from where the victim is said to have been dragged is a maize field where plants of maize were found trampled. It is also stated that there has been no mention in the case diary whether the girl had opposed or made any ruckus or cried while being dragged. No semen or blood is reported to have been found on the clothes which were sent for examination. She has not mentioned in the case diary that she had seen a bleeding injury. It is also stated that there has been no confirmation of rape in the medical report. There has been no mention of any injury such as bleeding injury in the Medical Report. The victim is stated to be an underage in the Medical Report, that is why charge-sheet was submitted under POCSO Act. The Doctor found no evidence of rape in the Medical Report.

14. Having heard the learned counsels appearing for the parties and having gone through the material placed on record and the evidence adduced by the prosecution before the Trial Court, it would emerge that for the occurrence which took place on 04.03.2018 at 04:30 pm, written complaint was given before the



informant to the concerned Police Station on 06.03.2018 at 17:00 hours i.e. after a period of two days. It would further reveal that except the victim, there is no other eye witness to the occurrence in question. Therefore, the version given by the victim is required to be scrutinized closely. It transpires from the record that after the registration of the F.I.R. on 06.03.2018, the victim was taken to the Doctor for medical examination. The Medical Board of Sadar Hospital, Supaul had examined the victim. Medical Report of the victim was produced before the Trial Court and is duly exhibited. PW-3 Dr. Nutan Verma, who was one of the members of the Medical Board, has deposed before the Court. The said witness has specifically stated that no sign of scuffle or any sign of rape was found. It further transpires from the record that thereafter the statement of the victim under Section 164 of the Code was recorded by the concerned Magistrate. In her statement, the victim has stated that she was forcibly taken to maize field by Devchandra and the present appellant. At that place, Devchandra committed rape on her and thereafter the appellant herein forcibly took her to banana orchard. At that place, the appellant committed rape on her, as a result of which, she became unconscious.

14.1. Thus, from the aforesaid evidence led by the prosecution, it transpires that there are major contradictions and



inconsistencies in the story put forward by the victim. The victim cannot be termed as sterling witness. Hence, we have to examine whether any other evidence is available which corroborates the version given by the victim.

15. From the deposition given by PW-3 Dr. Nutan Verma, it is clear that there was no sign of rape found when the victim was examined by the Medical Board. Even PW-6 Premlata Bhupashri, who carried out the investigation, has also admitted, during cross-examination, that she mentioned in the case diary that she had seen bleeding injury. She has also stated that there has been no confirmation of rape in the Medical Report and there is no reference of any injury such as bleeding injury in the Medical Report. She has also stated that the Doctor found no evidence of rape in the Medical Report. Thus, we are of the view that the version given by the victim is not supported by the medical evidence.

16. There is no other witness to the incident in question and, therefore, we are of the view that the prosecution has failed to prove the case against the appellant/accused beyond reasonable doubt.

17. It is also pertinent to note that, from the evidence of the victim as well as her sister, it is revealed that the victim was



studying in the school. However, the Investigating Agency has failed to collect any documentary evidence like school register, birth certificate etc. from which it can be established that the victim was minor.

18. We have also gone through the statement of the accused recorded under Section 313 of the Code. It would reveal from the said statement that the Trial Court has not put all the material evidence led by the prosecution against the appellant/accused at the time of recording the statement.

19. Looking to the aforesaid facts and circumstances of the present case, when the prosecution has failed to prove the case against the appellant/accused beyond reasonable doubt, the Trial Court ought to have acquitted the appellant/accused. However, impugned judgment and order passed by the Trial Court convicted the appellant and, therefore, the impugned order is required to be quashed and set aside.

20. The impugned judgment of conviction dated 17.02.2020 and order of sentence dated 25.02.2020 passed by learned Additional District and Sessions Judge-Ist, Supaul in POCSO 08/2018 (CIS-04/2018), arising out of Mahila P.S. Case No. 30 of 2018, are quashed and set aside.



21. The appellant namely Rameshwar Sada is acquitted of the charges levelled against him by the learned Trial Court. He is directed to be released from custody forthwith, if his custody is not required in any other case.

22. Accordingly, the appeal stands allowed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Sachin/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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