

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.418 of 2013**

Arising Out of PS. Case No.-115 Year-2011 Thana- BIRPUR District- Supaul

Rajendra Ram, Son of Sahdeo Ram, Resident of Village- Rampura, P.S.-
Balua Bazar (Birpur), District- Supaul.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Arun, Advocate

For the Respondent/s : Mr. Z. Hoda, APP

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

Date: 21-10-2024

Heard Mr. Arun, learned counsel for the appellant and
Mr. Zeyaul Hoda, learned APP for the State.

2. The appellant has preferred the present appeal filed against the Judgment of conviction and order of sentenced dated 17.04.2013 and 24.04.2013 passed by the learned Adhoc Additional Sessions Judge-IV, Supaul in Sessions Trial No. 193 of 2011 / Trial No. 43 of 2011 arising out of Birpur P.S. Case No. 115 of 2011, G.R. No. 351 of 2011 instituted for an offence punishable under Section 376 of the Indian Penal Code and sentenced to under go rigorous imprisonment for ten years and to pay a fine of Rs. 10,000/- and none payment of fine, the appellant further has been sentenced to under go simple imprisonment for three months.

3. Prosecution case as disclosed in the written report



lodged with the P.S. on 28.07.2011 at 7:30 Hrs. by the aforesaid prosecutrix aged about 15 years that on 27.07.2011 at 11 A.M., the prosecutrix left her house for collecting fodder for the cattles and on reaching village Rampura and thereafter at 1 P.M. when she started cutting fodder to the west pallar of the house of the Sahdeo Ram, then the accused Rajendra Ram after putting vermilion over her head took her forcibly to the field of Patuwa and raped her, thereafter, the accused took her to his house Rampura and in the night he committed rape on her twice. On the next morning, her parents came at Rampura and took her with them from the house of accused. Then the prosecutrix told the incidents to her parents who then told to the villagers and Sarpunch who advised them to go to thana and then this case was lodged by the prosecutrix.

4. On the written report of prosecutrix, this instant case was registered and thereafter investigation was taken up. After the completion of investigation, charge sheet was laid against the accused person for the offence punishable under Section 376 Indian Penal Code.

5. After the submission of charge sheet, cognizance of offence under Section 376 of the IPC was taken by the S.D.J.M., Birpur on 09.09.2011 against the above solitary accused and then case was committed to the Court of Sessions



on the date itself.

6. It has been argued on behalf of the accused persons that there is no eye witness to the occurrence. Even the evidence of victim is replete with contradictions and the medical evidence does not support the prosecution case, generating doubt in the prosecution case. On these scores the learned defence counsel prays for acquittal.

7. On the other hand, learned APP has strongly controverted the contention of defence counsel and has submitted that the statement of victim is very inspiring and it is well supported by the medical evidence. On the grounds, he has submitted that accused person deserves conviction.

8. On the basis of written report, the I.O. investigated the case and after completion of investigation, submitted charge-sheet on 31.07.2011 under Section 376 of the Indian Penal Code, thereafter the learned Magistrate took cognizance against the appellant & committed the case to the Court of Sessions, thereafter the learned Adhoc A.D.J. IV, framed charge on 19.02.2013 & proceeded the trial.

9. The prosecution in support of the charges examined altogether 8 witnesses, out of them PW-1, Parmila Devi (mother of the victim), PW-2, Ram Prasad Ram (father of victim), PW-3, the victim herself, PW-5, is Harendra Pd. Sharma, the I.O, P.W-



6, Dr. Rita Singh, P.W-7, Dr. Mahendra Chaudhary & P.W-8, Dr. Santosh Kr. Jha.

10. PW-1 is the mother of the victim, she deposed in her examination-in-chief that she made enquiry about the victim and went to the village of appellant where she found her daughter inside the house of the appellant from there she alone brought back to the victim. In her cross-examination, she has stated that younger brother of the appellant told her that the victim is inside the house. When the PW-1 went inside the house where she found the victim along with the parents of the appellant. She further stated that she saw vermilion in the head of the victim and the victim told her that the appellant has put the same and thereafter, the PW-1 took the victim with herself. The victim narrated the whole occurrence and thereafter she informed the co-villagers, Mukhiya & Sarpanch, they told the family of the victim to lodge a case against the appellant thereafter the victim lodged the instant case.

11. PW-2, the father of the victim, has deposed in his examination in chief, that while his daughter went to the village for cutting grass, the appellant forcibly caught hold and committed rape in *Patua* field and took her to his house where the appellant put vermilion in her head and committed rape. He further deposed that he is labour of Sarpanch of village. In his



cross examination, he has stated that he did not allow this kind of marriage and came back to his village where the victim narrated the whole story thereafter on the instruction of his co-villagers, the instant FIR was lodged by the victim.

12. PW-3 is the victim herself, and has stated in her examination-in-chief that while she was cutting grass in Rampura Palar, the appellant came near her and forcibly put vermilion in her head and took her in *Patua* field and committed rape. She further deposed that she opened her *Salwar* and the appellant committed rape. She further deposed that in the evening, the appellant took her to this house and locked her in his house and again committed rape. In the morning, her mother and father came to the house of the appellant and brought the victim back to her village. In her village *Mukhiya* and *Sarpunch* told the family of the victim to lodge a case, thereafter she submitted her written report to the police station. In her deposition, she stated that place of occurrence is about 2 K.M. away from her village. She, thereafter stated that several persons of her village were going to cut grass. While committing rape, the appellant had closed her mouth. She also stated that the appellant did not commit rape before the occurrence. She deposed in her deposition that not a single part of her body was damaged and the appellant was willing to



marry with the victim and nothing entered in her private part.

13. PW-4 is Narayan Ram, who is the villager, in his examination-in-chief stated that he along with 9 other persons went at the *Darwaja* of the appellant and brought the victim back and she narrated the entire incident to the co-villagers after coming back to the village. In his cross-examination, this witness has stated that the appellant is his neighbor. He further stated that on the instance of the *Mukhiya* and *Sarpanch* the victim lodged the instant FIR.

14. PW-5, namely, Harendra Prasad Sharma, who is the Investigating Officer of the present case and stated in his deposition that the victim and other witnesses supported the prosecution case and during course of the investigation, the appellant was arrested and after completion of investigation charge sheet was submitted.

15. PW-6, namely, Dr. Rita Singh, who examined the victim and opined that evidence of rape is not present. However, she stated that rape cannot be excluded. She further stated that mere touching of private part is also constitutes rape and she has mentioned the same on the basis of medical jurisprudence.

16. PW-7, is Dr. Mahendra Choudhary, one of the members of Medical Board, Sadar Hospital, Supaul and according to the report of the victim, she was found to be aged



about 15 to 16 years.

17. PW-8, is Santosh Kumar Jha, who is Dental Surgeon of Sadar Hospital, Supaul, has examined and issued report of age on the basis of arrangement of teeth, where, doctor found her age about 14-17 years old.

18. On the basis of evidences available on record and after considering the submissions made by the learned counsel of the respective parties, it appears that PW-6, who is the doctor, who examined the victim has stated that the evidence of rape is not present, but the PW-6 (doctor) has also stated that rape cannot be excluded and it has been mentioned on the basis of medical jurisprudence and as the victim has herself stated in paragraph no. 9 of her examination-in-chief that no clothes were torn and the appellant wanted to marry with her. Further, the victim has stated that the appellant did not penetrate herself. The victim further stated that the appellant is a person, having children and the victim further stated that her parents did not like the appellant. The victim also stated that she did not know about the name of the appellant and where the appellant was working, which creates a serious doubt upon case of the prosecution.

19. On perusal of the impugned judgment dated 17.04.2013 and order of sentence and conviction dated



24.04.2013 passed in Session Trial No. 193 of 2011 by the learned Adhoc ADJ-IV, Supaul, the compliance of Section 313 of Cr.P.C. has been done by the learned trial court, but on the point of sentence and order of conviction dated 24.04.2013 passed by learned Adhoc ADJ-IV, Supaul, the proper compliance of Section 313 of Cr.P.C. has not been done and mere mention of Section 313 of Cr.P.C. is there and the accused has not been heard correctly.

20. Considering the provision of Section 313 of the Cr.P.C., this provision of the aforesaid section has a purpose of empowering the Court to examine the accused to meet the requirement of the principle of natural justice and the accused on the basis of this provision, may be asked to furnish some explanation as regards the incriminating circumstances associated against him and the Court must take note of such explanation. The provision of Section 313 is to establish a direct dialogue between the Court and the accused and a proper methodology is to be adopted by the Court for recording the statement of the accused to by throwing light upon the incriminating circumstances and evidence and seek an explanation of the accused person. If the opportunity of examination under section 313 is given to the accused, and is not done in an accurate manner, it may result in imperfect



appreciation of evidence.

21. In the facts and circumstances of the case, I find and hold that the prosecution has failed to substantiate the prosecution case. Hence, the impugned judgment dated 17.04.2013 and order of conviction dated 24.04.2013 passed by the learned Adhoc ADJ-IV, Supaul against the appellant is set aside and the appellant is acquitted from the charge levelled against him. As the appellant is on bail, he is discharged from the liability of bail bond.

22. Accordingly, this appeal is allowed.

(Ramesh Chand Malviya, J)

Brajesh Kumar

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.10.2024
Transmission Date	24.10.2024

