

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.746 of 2021

Arising Out of PS. Case No.-12 Year-2016 Thana- MAHILA P.S. District- Saran

Shakuntala Devi, Wife of Dhruv Prasad, Resident of Village- Nakata Devi Road, Dighwara, P.S.- Dighwara, District- Saran at Chapra.

... .. Appellant/s

Versus

1. The State of Bihar
2. Lakshman Sah S/o- Late Ram Bachan Sah Resident of Village- Barka Telpa, P.S.- Chapra Town, District- Saran at Chapra.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Md. Irshad, Amicus Curiae

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

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

12 24-04-2024 Since no one is appearing on behalf of the appellant, we have requested Mr. Md. Irshad, Advocate of this Court having considerable experience at the bar to assist this Court as Amicus Curiae.

2. Heard Mr. Md. Irshad, learned Amicus Curiae and Mr. Bipin Kumar, learned Additional Public Prosecutor for the State.

3. The present appeal arises out of the judgment of acquittal dated 3rd of April, 2021 passed by learned Exclusive Special Judge (POCSO), Saran at Chapra in Sessions Trial (POCSO) No.04 of 2017 arising out of Mahila P.S. Case No.12



of 2016, Registration No.ST.POCSO-1793 of 2016 whereby and whereunder the learned trial court has been pleased to hold and declare that the prosecution has failed to establish foundational facts constituting offence under Sections 376, 342 and 506 of the Indian Penal Code as also under Section 4 of the POCSO Act. The learned trial court has held that the accused is entitled to be acquitted and, accordingly, the order of acquittal has been passed and the accused has been discharged from the liabilities of the bail bonds.

4. As per the prosecution story, the informant Shakuntala Devi submitted a typed application to the Superintendent of Police on 17.03.2016 at about 4.45 PM regarding the occurrence of 28.01.2016 alleging therein that she had given a loan of Rs.2500/- to one Ranjeet Prasad and when she demanded the said money, his wife and mother assaulted her causing head injury for which she had filed a complaint on 28.01.2016. In the meantime, due to slip, her leg got fractured and she was advised for bed rest. On 28.01.2016, the accused Laxman Prasad who is son-in-law of her sister-in-law (Nanad) came and told that her advocate called her for her deposition and in case she would not go for deposition then there is possibility that she would be sent to jail. It is alleged that believing his statement, the informant



asked her daughter (victim) to go to Civil Court for deposition. The victim left the house with the accused but the accused did not take the victim to Chapra civil Court and told the victim that he had talked to the advocate and advocate said that she would not be examined as witness on that day. At about 6.30 PM the accused took the victim to his house situated at Bada Telpa where two unknown boys also came. It is further alleged that suddenly the accused pulled her dupatta and pressed her breast and one of the boys pointed knife on her neck and forcibly took her into the house and removed her clothes and then all the three committed rape on her and also made video of the incident. On the next morning again all the three raped her and lastly left her at Dighwara bus stand.

5. On the basis of the written report of the informant, Mahila P.S. Case No.12 of 2016 dated 17.03.2016 under Sections 376, 342 and 506/34 of Indian Penal Code and Section 4 of the POCSO Act was registered against the accused. After investigation the case was found true, police submitted a chargesheet whereupon the learned trial court took cognizance of the offences under Sections 376, 342 and 506/34 of the Indian Penal Code as also under Section 4 of the POCSO Act.

6. The learned trial court explained the charges to the



accused who denied the same and claimed to be tried. Accordingly, charges were framed under the aforesaid Sections.

7. In course of trial, the prosecution examined as many as 7 witnesses and exhibited 6 documents, the detail description of the witnesses and the documents exhibited on behalf of the prosecution are mentioned hereunder for a ready reference:-

PW-1	Victim herself
PW-2	Shakuntala Devi, the informant
PW-3	Lakshmina Devi
PW-4	Raj Kumar Shrivastav
PW-5	Dhruv Prasad Sah
PW-6	Dr. Sanjeev Ranjan
PW-7	Girish Kumar Singh
Exhibit '1'	Signature of informant Shakuntala Devi (PW-2) on typed written report
Exhibit '2'	Medical report of the victim bearing signature of Dr. Sanjeev Ranjan (PW-6)
Exhibit '3'	Formal FIR
Exhibit '3/1'	Endorsement on typed written report bearing signature of Harendra Kumar Singh SI Mahila Police Station, Chapra
Exhibit '4'	Signature of the victim on the statements recorded under Section 164 Cr.P.C.
Exhibit '5'	Statements of victim recorded under Section 164 Cr.P.C.

8. The learned trial court recorded the statement of the accused in terms of Section 313 of the Code of Criminal Procedure wherein the accused denied all the allegations and claims himself to be innocent. The defence adduced one witness



namely Ashok Kumar Sharma who has deposed as DW-1.

9. The learned trial court has having analyzed the evidences on the records found that the victim (PW-1) has stated that on 28.01.2016, the accused pulled her dupatta and pressed her breast and one of the boys pointed knife on her neck and forcibly took her into the house and removed her clothes and then all the three committed rape on her and also made video of the incident. On the next morning again all the three raped her and lastly left her at Dighwara bus stand but this witness has stated that she did not disclose about the incident to her mother and in the month of February she disclosed the incident to her mother whereafter the case was filed. The mother of the victim (PW-2) has stated that on 28.01.2016 her daughter did not return, she returned on 29.01.2016 and disclosed the occurrence but she neither filed a case nor made any complaint either to Mukhiya or to Dighwara Police Station.

10. Learned trial court has further found that the father of the victim (PW-5) has stated that he could not say whether this case is false or correct. This case was lodged after 47 days of the occurrence and an explanation has been sought to be placed for the delay saying that due to fracture in her legs the delay had occurred. The learned trial court found it difficult to



believe that the guardian of the victim and the victim would wait for such a long period of 47 days for filing the FIR. According to learned trial court, the absence of reasonable and justifiable explanation for the delay in lodging of the FIR, it will be fatal to the prosecution.

11. The learned trial court further found that the conduct of the victim and her guardian both are questionable and not believable. The victim claims that she was having a mobile with her but she did not make any call to her mother or anyone when she was in clutch of the accused persons. She did not give her blood stained clothes to the police rather she has stated that she threw her torn clothes. The learned court, thus, found major contradictions among the statements of the witnesses and also found that medical report did not support the prosecution case as the doctor found the hymen intact and further not found any evidence of either recent intercourse or intercourse in past. The learned trial court has relied upon the judgment of Hon'ble Calcutta High Court in the case of Subrato Biswas Vs. the State of West Bengal reported in CRA011/2018 Cal. wherein it has been observed that "A proper interpretation of Section 29 is that prosecution is absolved from proving its case beyond reasonable doubt but it is only required to lead evidence to establish ingre-



dients of offence on a preponderance of probability, only when prosecution lays foundation of its case by leading cogent and reliable evidence, the onus shifts on accused to prove the contrary. If prosecution fails to do so, no question arises of invoking section 29 of POCSO Act.”

12. Mr. Md. Irshad, learned Amicus has perused the records. It is submitted that one of the contentions on behalf of the appellant is that the learned trial court while scrutinizing the documents and statements of the witnesses has not properly appreciated the prosecution evidence. Learned Amicus has pointed out that according to the appellant all the prosecution witnesses including the victim fully supported the prosecution case and any minor discrepancy cannot take away the whole case of the prosecution.

13. Mr. Bipin Kumar, learned Additional Public Prosecutor for the State has supported the judgment of the learned trial court. Learned Addl.P.P. submits that the learned trial court has rightly taken note of the huge delay of 47 days in lodging of the First Information Report. It is submitted that in this case the alleged occurrence took place on 28.01.2016, the victim (PW-1) claims that she had informed about the occurrence to her mother in February, 2016 but from the formal FIR, it would appear that



the same was registered on 17.03.2016. It is submitted that the occurrence as alleged has not been proved even prima-facie. In this connection the evidence of the doctor (PW-6) would show that the doctor has found the age of the victim in between 17 to 18 years and that there was no mark of injury on the external part of the body, no mark of injury in or around the private part and the hymen was intact. PW-6 has clearly opined that there is no evidence of recent intercourse or intercourse in the past.

14. Learned counsel submits that the accused, namely, Laxman Prasad is the son-in-law of informant's sister-in-law (Nanad) and it appears to be a case of no evidence.

15. We have carefully perused the materials available on the record and noted the submissions of learned Amicus Curiae as well as learned Addl.P.P. for the State. From the discussions made in the impugned judgment, it is crystal clear to this Court that the prosecution is not even able to establish its case to lay down the foundation of the whole prosecution story to the extent of a preponderance of possibility. The conduct of the victim (PW-1) and her mother are such that they cannot be said to be reliable witnesses. The doctor (PW-6) has proved the medical report as exhibit '2' which completely rules out the occurrence as alleged by PW-1. Considering the huge delay in lodging the



FIR and the unreliable conduct of PW-1 and PW-2, in the opinion of this Court, the learned trial court has rightly appreciated the evidences on the record and acquitted the accused.

16. We find no merit in this appeal. It is dismissed accordingly.

17. For the services rendered by Mr. Md. Irshad, learned Advocate as Amicus, we direct that a sum of Rs.10,000/- (rupees ten thousand) shall be paid to him by the Patna High Court Legal Services Authority within one month from today.

(Rajeev Ranjan Prasad, J)

(Jitendra Kumar, J)

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