

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1156 of 2016

Arising Out of PS. Case No.-224 Year-2012 Thana- MASAUDHI District- Patna

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Tuntun @ Dharmendra Ravidas Son of Kedar Ravidas Resident of Village -
Sukachayia, P.S. - Masaurhi, District - Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Parmeshwar Mehta, Advocate
		Mr. Barun Prasad, Advocate
For the State	:	Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date : 12-01-2024

Heard learned counsel for the appellant and learned
counsel for the State.

2. This criminal appeal has been preferred against the
judgment of conviction dated 14.09.2016 and order of sentence
dated 20.09.2016 passed by learned Additional Sessions Judge
VIII, Jehanabad in connection with Sessions Trial No.374 of 2013
arising out of Masaurhi P.S. Case No.224 of 2012 whereby and
whereunder the appellant has been convicted under Section 376 of
the I.P.C. and sentenced him to undergo rigorous imprisonment for
life and a fine of Rs.3 lakhs and in default thereof, the appellant
shall undergo simple imprisonment for three years. It has further



been directed that out of fine of Rs.3 lakhs, an amount of Rs.2.5 lakhs shall liable to be paid to the victim for her rehabilitation.

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. The prosecution case, in brief, is that the informant (victim's father) gave his fardbeyan on 31.07.2012 before the Masaurhi Police Station *inter alia* that his daughter (victim) aged about 10 years, who is a student of Class IV, like other days had gone to the Badhar of village for getting she-buffalo grazed and playing. In the evening of the same day, Tuntun Ravidas @ Dharmendra Ravidas of the same village, on the pretext of talking to her brother and feeding *jalebi*, took her to a lonely place of Badhar where under the guise of *alang* near palm tree he (Tuntun Ravidas) forcibly committed rape with her. The victim came to her house writhing in pain as also the blood was oozing from her private part and stated about the incident to her family members. On the basis of the aforesaid fardbeyan, Masaurhi P.S. Case No.224 of 2012 under Section 376 of the Indian Penal Code was registered.

5. It is relevant to mention here that the Protection of Children from Sexual Offences Act, 2012 brought into force on 14.11.2012 to protect the children from offences of sexual assault,



sexual harassment and pornography and the alleged incident on child victim occurred before the POCSO Act, 2012 came into force, accordingly, the said Act has not been made applicable in the instant case.

6. The investigation of the case was carried out by the Investigating Officer and after completion of the investigation, the police submitted charge sheet against the appellant under Section 376 of the I.P.C. Thereafter, cognizance was taken on 06.10.2012 for the offences punishable under Sections 376 and 511 of the I.P.C. Then the case was committed to the Court of Sessions on 04.02.2013 and charge was framed under Section 376 of the I.P.C. against the appellant on which the appellant pleaded not guilty and claimed to be tried.

7. To substantiate the charge levelled against the accused/appellant, the prosecution has examined altogether six witnesses, who are as follows:-

P.W.1 is Shyam Babu Das (Independent Witness)

P.W.2 is mother of the victim

P.W.3 is the victim

P.W.4 is the informant & father of the victim

P.W.5 is Dr. Malti Sinha (Medical Officer)

P.W.6 is Santosh Kumar Pankaj (I.O.)

8. The prosecution has also exhibited following documentary evidences:-

Ext.1 is the signature of the victim's mother (PW-2) on



the seizure list.
Ext.1/1 is the seizure list.
Ext.2 is the signature of the victim on statement recorded
under Section 164 of the Cr.P.C.
Ext.3 is the Medical Report.
Ext.3/1 is Supplementary Medical Report.
Ext.4 is the Fardbeyan
Ext.5 is the Formal F.I.R.

9. After completion of oral and documentary evidences, the statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. bringing to his notice incriminating evidence found against him from the evidence of prosecution witnesses for which he denied and claimed innocence.

10. The defence has not adduced any evidence either oral or documentary in support of his defence.

11. At the conclusion of trial, the Trial Court has convicted the accused/appellant and sentenced him as aforesaid. Being aggrieved by the judgment of conviction and order of sentence, the present appeal.

12. Learned counsel appearing on behalf of the appellant assailing the impugned judgment and order of the Trial Court has submitted that the appellant has falsely been implicated in this case. He has submitted that PW-2 and PW-4, who are parents of the victim, are not the eye witnesses to the occurrence and they are hearsay witnesses to whom the victim disclosed the occurrence. The prosecution witnesses are close relatives and highly interested.



Their evidence has not been scanned carefully and cautiously. He has further submitted that the prosecution has failed to prove the place of occurrence, the factum of rape and the manner of occurrence. It is next submitted that the victim girl was not subjected to any sexual assault rather in course of playing, she fell down and sustained injury. He has contended that the medical evidence completely falsifies the prosecution case as the doctor found hymen intact and no injury was found on other parts. Even no foreign hair nor sperm was found on the body of the victim. It is also contended that the appreciation of evidence by the Trial Court is not proper and correct. The appellant ought to have been acquitted of the charges but the court below committed an error in convicting and sentencing the appellant.

13. On the other hand, learned counsel for the State by filing its written objection has submitted that the prosecution has been able to prove its case. The victim is a minor, who has stated about the incident and the evidence of victim alone is sufficient to prove the prosecution case as per settled position of law. The victim and her parents have fully supported the prosecution case. The evidence would suggest that the clothes worn by the victim were drenched with blood. He has further submitted that the doctor (P.W.5), who has examined the victim, found laceration to external



vaginal part, linear laceration 1 cm long present and old blood discharge was present over private part, which corroborates the prosecution story. He has contended that the Trial Court after appreciating the whole facts and circumstances of the entire evidence in a thorough trial convicted and sentenced the appellant for rigorous imprisonment for life. Therefore, there is no perversity in the impugned judgment. The impugned judgment is in accordance with law and this appeal is liable to be dismissed.

14. We have perused the impugned judgment and Trial Court records and given thoughtful consideration to the rival contention made on behalf of the parties.

15. From perusal of the impugned judgment, it is clear that the learned Trial Court convicted the appellant holding that the victim and her parents have supported the factum of rape committed by the appellant with her which was supported by the medical evidence.

16. The learned Trial Court on considering the deposition of victim (PW-3) that accused/appellant had taken her in his lap and threw her down on Chhilka and had done wrong thing with her after opening her pant and when she cried, he pressed her neck and the blood was washed away by him and also threatened to kill her in drain by pressing her neck. The said fact was immediately



narrated by the victim to her mother and father (PW-2 and PW-4) after occurrence who had seen blood coming out from her private part. The doctor (PW-5) has found injury of 1 cm length on the private part of the victim which is evidence of insertion of penis. Accordingly, on the basis of ocular and medical evidence, the Trial Court came to the conclusion that rape was committed on the victim. The Trial Court relied on judgments of Hon'ble Supreme Court including the judgment in case of *Madan Gopal Kakkad vs. Naval Dubey and another* reported in (1992) 3 SCC 204 = 1992 SCR (2) 921.

17. The Trial Court also gave finding that the appellant had committed rape on the victim considering that the victim without any contradiction stated the name of appellant immediately after occurrence to her parents (PW-2 and PW-4) and in her statement under Section 164 Cr.P.C. and in her evidence before the Court, she had taken the name of appellant and even in Court she in her weeping condition on seeing appellant stated that he had done wrong thing with her. The learned Trial Court concluded that in the instant case considering the statement of victim, the mark of injury on her private part, when police came the appellant hide himself on *machan* (store room) of his house clearly without any doubt proves that the appellant had committed rape on victim.



18. The appellate Court is empowered to reappreciate the entire evidence on record for the purpose of ascertaining as to whether the appellant had committed the charged offence or not and if the impugned judgment and order is ultimately found to be clearly unreasonable and perverse then such judgment and order can be set aside by the appellate Court.

19. To examine the correctness of the findings, we will first assess the testimony of witnesses adduced by the prosecution. P.W.3 is the victim of this case. The Trial Court by asking preliminary question to her, tested her competency to understand the occurrence and to speak the truth and thereafter being satisfied recorded her evidence. She had deposed that on the day of occurrence at about 04:00 p.m. she had gone to graze the buffalo where Tuntun Bhaiya (accused/appellant) asked her to talk her brother on phone but the victim refused to talk. Thereafter the accused/appellant said her that her brother had come at Chhilka, let's go but on refusal, the accused/appellant took her in his lap and took away to Chhilka and threw her down and committed wrong after removing her pant on account of which blood started oozing which was washed away by Tuntun (accused/appellant). When she started crying, the accused/appellant threatened her to throw in *nala* by pressing her neck. Thereafter the victim came to her house.



She has further deposed that her statement was recorded under Section 164 Cr.P.C. before the Magistrate and she put her signature which is marked as Ext.2. She was not cross-examined on behalf of the appellant.

20. PW-2 is the mother of the victim, who has supported the prosecution case. She has deposed that the victim was 8-9 years old and studied in Class IV. On the day of alleged occurrence, the buffalo returned home but the victim did not return home then she went in search of the victim. The boys told her that Tuntun took the victim. She further deposed that she saw the victim coming weeping and on enquiry, the victim narrated the whole incident stating that Tuntun had taken her away on the pretext of call of her brother and committed wrong by pressing her mouth due to which blood was oozing. Tuntun had threatened her. Her undergarment was drenched with blood which was seized by the police. PW-2 put her signature on the seizure list which is marked as Ext.1. The villagers searched Tuntun but he was not found. Someone of the village informed the police thereafter the accused/appellant was arrested from his house.

21. PW-4 is the informant, who is victim's father. He also supported the prosecution case by deposing that on the date of alleged occurrence, the victim had gone to Badhar for grazing



buffalo. Before the Sun set, buffalo of all came but the victim did not come to her house. He further deposed that when he along with his wife went in search of his daughter (victim), they found her in *khanda*. The victim told him that Tuntun Ravidas had committed wrong. The blood was found on her leg and undergarment (*janghia*). Many villagers assembled there. Someone of the village informed the police. Thereafter police reached and took his statement on which he put his thumb impression. He was cross-examined. During his cross-examination, he has admitted that he, Mukhiya or Sarpanch or Chaukidar had not given information to the police and the police came at about 10:00 p.m. in the village and had taken his statement. He denied the suggestion of the defence that no such occurrence had taken place but the victim got injury during playing.

22. PW-1 is Shyam Babu Das, who is said to be the uncle of the victim. He has deposed that on the day of occurrence, the victim had gone to graze the buffalo. Tuntun Ravidas had took away the victim towards Chhilka by alluring her and committed rape with her. The victim had narrated the whole incident to him by weeping. There was blood in her pant. He next deposed that someone informed the police, thereafter the police came and arrested Tuntun from *machan* of Tuntun's house. He was cross-



examined but nothing material contradiction came on record to disbelieve him.

23. PW-6 is the I.O., who had submitted charge sheet against the appellant. He deposed that he was informed about the alleged incident and he also stated about the place of occurrence. He has deposed that he arrested the accused/appellant from his (appellant) house and produced the victim before the magistrate for recording her statement under Section 164 Cr.P.C. The victim was medically examined by Dr. Malti Sinha. He also took the statements of witnesses. He has deposed that he had seized the cloth of the victim and the seizure list was marked as Ext.5. In his cross-examination, he has deposed that he had gone to place of occurrence on 01.08.2012. He has further stated that he has no knowledge about any land dispute between the parties.

24. PW-5 (Dr. Malti Sinha) is the Medical Officer, who had examined the victim on 01.08.2012 at 03:30 p.m. She has deposed that on body examination of victim, there was no mark of violence over her body except private part of the victim. She found linear laceration 1 cm long over external vaginal part. As per radiological report, the age of the victim was assessed to be 9-10 years. There was old blood discharge present over private part. PW-5 has proved the injury report and supplementary report, which



were marked as Exts.3 and 3/1 with respect to vaginal examination of victim in which it has been stated as follows:

“Vaginal examination :-There is laceration to external vaginal part (linear laceration present) 1 cm long, hymen intact, no injury seen over her other part, no foreign hair present, no abnormal discharge present except blood, no finger tip can be admitted in her vagina.

25. There is nothing material to disbelieve the evidence of victim. We have no reservation in accepting the evidence of victim (PW-3) in its entirety which clearly makes out a case for an offence under Section 376 I.P.C. It is well settled that corroboration is not the *sine qua non* for conviction in a rape case. The evidence of a victim of sexual assault stands on par with evidence of an injured witness who is the best witness in the sense that she is least likely to exculpate the real offender, the evidence of a victim of a sex-offence is entitled to great weight, absence of corroboration notwithstanding. The eye witness cannot be expected in sex offences having regard to the very nature of the offence. If the evidence of the victim does not suffer from any basic infirmity, there is no reason to insist on corroboration except from the medical evidence.

26. The evidence of victim is fully reliable and also corroborated by the other evidence on record. There is no reason that parents of the victim would tutor her to invent a story of rape



on the part of the appellant in order to implicate the appellant. It is not alleged that the victim had any motive to falsely implicate the appellant. The medical evidence plays crucial role to prove the offence under Section 376 of the I.P.C. The medical evidence fully supports the finding of rape on victim. The discrepancies pointed by the learned counsel for the appellant do not go to the root of matter and do not shake the basic version of the witnesses.

27. When the evidence of victim taken with the evidence of medical officer, who found linear laceration (1 cm long) to external vaginal part of the victim (aged 9 to 10 years) and found old blood discharge present over private part, the Trial Court rightly concluded that the rape was committed on the victim by the appellant.

28. From the above discussion, we hold that the prosecution has satisfactorily established its case that the appellant has committed rape on victim (PW-3) by proving all the necessary ingredients required to make out an offence of rape punishable under Section 376 of the I.P.C.

29. In the result, the impugned judgment of conviction to the appellant under Section 376 of the I.P.C. is **confirmed**.

30. The only question that now remains to be considered is as regards the sentence. Learned counsel for the appellant submits



that the age of appellant on the date of occurrence was determined as 18 years 2 months and he has no criminal antecedent and poses no threat to society and he has undergone sentence for approximately 11 years 5 months and prayed for leniency. Learned counsel for the State has submitted that the appellant has done the heinous crime of rape, a crime against human dignity. He has submitted that mandatory requirement under Section 376 I.P.C. is to impose the punishment of either description for a term which shall not be less than 7 years but which may be life or for a term which may extent to 10 years, provided that the Court may for adequate and special reason to be mentioned in the judgment, impose the punishment for a term less than 7 years.

31. It is well settled that protection of society to which the criminal and the victim belong and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence.

32. In the *State of Karnatka vs. Raju* reported in *A.I.R. 2007 SC 3225*, the Hon'ble Supreme Court dealt with a case of rape of minor girl below 12 years of age and observed that the normal sentence in a case where rape is committed on a child below 12 years of age, is not less than ten years rigorous imprisonment though in exceptional cases, for special and adequate



reasons, sentence of less than ten years can also be awarded.

33. Taking into account the facts and circumstances of the case, age of the appellant and the period of his custody, we are of the opinion that ends of justice will be satisfied, if the substantive sentence impugned by the Trial Court for the offence under Section 376 of I.P.C. is reduced from life imprisonment to 12 years rigorous imprisonment in jail custody by the appellant. The sentence of fine and in default of fine will, of course, remain undisturbed. The sentence is, accordingly, modified to the above extent.

34. The appeal is, accordingly, partly allowed to the above extent.

35. The Trial Court records of the instant appeal be returned to the Trial Court forthwith.

36. Interlocutory Application(s), if any, stands/stand disposed off, accordingly.

(Sunil Dutta Mishra, J)

I agree
Arvind Srivastava, J

(Arvind Srivastava, J)

Harish/-

AFR/NAFR	NAFR
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