

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.818 of 2021

Arising Out of PS. Case No.-149 Year-2018 Thana- BALIYA District- Begusarai

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Shambhu Yadav, S/o Bal Ram Yadav, R/o Village- Madhurapur, P.S.- Baliya,
District- Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Bachan Jee Ojha, Adv.

For the State : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 14-11-2024

Heard the learned counsel for the parties.

2. The sole appellant/Shambhu Yadav has been convicted for the offences under Section 376 (3) of the Indian Penal Code (*in short the IPC*) and Section 4 of the Protection of Children from Sexual Offences Act, 2012 *vide* judgment dated 23.02.2021 passed by the



learned Additional Sessions Judge-VI-cum-Special Judge, POCSO Act, Begusarai in POCSO Case No. 44 of 2018 arising out of Baliya P.S. Case No. 149 of 2018. By order dated 01.03.2021, he has been sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- for the offence under Section 376 (3) of the IPC. In case of default of payment of fine, he has further been sentenced to undergo S.I. for a period of six months.

3. The appellant is said to have raped a 18 months old child.

4. The FIR has been lodged by the mother of the victim (P.W. 1). She had lodged a written report, addressed to the Officer-in-Charge of Baliya Police Station on 04.06.2018, alleging that on the same day, she had left her 18 months old daughter in her courtyard and had gone to attend to the call of nature in the backyards. She heard the wails of her daughter and rushed back home. She saw from a distance that the



appellant had undressed the child and had mounted himself on her. She could extricate the appellant from the child by pulling his hair. In the meantime, many persons of the locality arrived. The appellant ran away. P.W. 1, the mother of the victim, thereafter, went to the police station and lodged the case. The victim was bleeding from her private parts and was immediately referred to *Sadar* Hospital, Begusarai.

5. On the basis of the afore-noted written report, a case *vide* Baliya P.S. Case No. 149 of 2018, dated 04.06.2018, was registered for investigation.

6. The police, after investigation, submitted charge-sheet against the appellant, whereupon cognizance was taken and the case was tried by the learned Special Court.

7. There is no dispute with respect to the victim being a toddler, 18 months old.

8. Dr. Ram Pravesh Prasad (P.W. 4) was part of the medical team, who assessed the age of the



victim to be 18 months. Similar was the assessment by Dr. Arun Kumar (P.W. 5), who affirmed the opinion of the Medical Board that the victim was 18 months old.

9. Dr. Shashi Prabha (P.W. 6) though did not find any injury on other parts of the body of the victim, but there were injuries on front and back. According to her, there was evidence of recent sexual assault. There were abrasions all around the anus with reddish colour. The microscopic examination of the vaginal swab though did not show any spermatozoa. However, she also stated before the Trial Court that at the time of examination of the victim, she did not find any fresh bleeding.

10. There cannot be any doubt about the assessment of the age of the victim on the basis of radiological and dental examination. That the victim had received injuries in and around anus in such a manner that it reflected that she was subjected to sexual violence.



11. Now coming to the evidence of the mother of the victim (P.W. 1), the only difference in her statement before the Trial Court is that she did not speak about her having pulled the appellant by hair. In fact, she saw the appellant from a very close distance, who ran away. In cross-examination, she has stated that around her house, the house of Baudhu Yadav (not examined) and Bhushan Yadav are situated. The house of the appellant is located to the west of her own house. There was a dispute between Bhushan Yadav and the appellant with respect to some land. The blood stained clothes were collected by the Investigator on the next day of the occurrence.

12. It has also been pointed out on behalf of the appellant that the written report was scribed by somebody else and P.W. 1 had only put her RTI on the said document. According to P.W. 1, blood had also fallen on the earth which too was seized by the Investigator and she had put her thumb impression on



such seizure-list.

13. In order to point out the mitigating features of this case, Mr. Ojha, the learned counsel has drawn the attention of this Court to the evidence of the father of the victim (P.W. 2), who claims to have learnt about the occurrence through his wife on telephone. On such information, he immediately reached Begusarai Hospital where the victim was being treated. At that time, the victim was unconscious. With respect to the appellant, P.W. 2 has clearly stated that the appellant is a family man with several children and is a neighbour with whom he had no dispute in the past. In fact, they drank and ate together. However, there was dispute between the appellant and Ganesh as well as Bhushan Yadav, both of whom are related to P.W. 2. It has also been pointed out that P.W. 2 never made any statement before the police and had deposed before the Trial Court straightway.

14. Anita Devi (P.W. 3), who is the sister-



in-law of P.W. 1, has only stated that while she was at her house, she learnt that the appellant has committed sexual violence with the victim. Around 100 to 200 persons had assembled there for having a look at the victim. She had seen the appellant running away from the house of P.W. 1.

15. Similar statements have been made by the other witnesses, who are the uncle, grandfather and neighbours of the victim.

16. The case was investigated by one Khajanchi Nutt (P.W. 7), who claims to have sent the blood stained clothes of the victim for forensic examination. The forensic examination report has revealed the presence of blood but not semen on such clothes. Nothing else was offered by the Investigator to the Trial Court for coming to any definitive conclusion. All that he said was that he did not find any blood at the place where the occurrence took place.

17. Two defense witnesses have been



examined who have spoken about their having seen the mother of the victim rushing towards her home with her child in her lap, whom she had left unattended for going to ease herself.

18. An argument has been advanced that perhaps the victim got injured while she was made to sit on the floor while her mother had gone out of the house.

19. The two defense witnesses were never examined by the police during the course of investigation.

20. From the conspectus of evidence, it has been argued that there could be two possibilities in the case, viz., that because the appellant was having some dispute with Bhushan and Ganesh, the cousins of the father of the victim, the appellant has been falsely framed in this case and that an advantage was taken by P.W. 1 because of the injury suffered by the victim while she was put on the floor for her mother to come out and attend to the call of nature.



21. Both these possibilities are only conjectural.

22. P.W. 1, the mother of the victim, saw the occurrence. Even if some part of her statement in the written report is discounted for, she had seen the appellant from very close quarters. There could not be any doubt about the identification of the appellant. The appellant was also seen running away from the house in his *lungi* and T-shirt by other witnesses.

23. The medical examination of the victim clearly indicates that she was subjected to sexual violence. This was a beastly act. The injuries do not appear to have been caused otherwise.

24. We are not persuaded by the argument made on behalf of the appellant that he has been falsely framed in this case. It does not appear to be probable or reasonable that on the asking of the cousins of the father of the victim, the appellant would be falsely framed in the case. The victim was unconscious when



her father (P.W. 2) saw her in the hospital. This would not have been possible with any injury otherwise and not by any sexual assault on her.

25. The argument on behalf of the appellant that all the witnesses are interested witnesses also does not appeal to us. A related witness is not always an interested witness. No doubt, a witness would be interested only when he or she would derive some benefit from the result of litigation in the decree in civil case or they see an accused person punished, but that does not take away the quality of the evidence from the near relatives of the victim, one of whom has seen the appellant having mounted himself on the victim in the absence of any other member of the house.

26. Mr. Ojha has vehemently argued that even if the report of the Medical Board is accepted to be true, it was only a case of sexual assault and no case of penetration.

27. We are afraid whether such an argument



could be made in a case of this kind.

28. In sum and substance, we find that the appellant has displayed a horrendous act of satisfying his lust. No leniency is required to be adopted in assessing the evidence against him.

29. We are in absolute agreement with the opinion of the Trial Court that the appellant deserves to be convicted and punished accordingly.

30. Making no interference with the judgment under appeal, we dismiss this appeal.

(Ashutosh Kumar, J)

(Rajesh Kumar Verma, J)

Praveen-II/-

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