

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.813 of 2022

Arising Out of PS. Case No.-163 Year-2012 Thana- PIPRA District- Supaul

Hare Ram Mandal, Aged about 45 years, Gender-Male, Son of Late Mahabir Mandal, R/O Village- Thumha Bazar, P.S.- Pipra, District- Supaul

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Hriday Narayan Harshit, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 22-04-2025

Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State.

2. The present appeal has been preferred for setting aside the judgment of conviction dated 07.05.2013 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 13.05.2013 (hereinafter referred to as the 'impugned order') passed by learned Adhoc Additional Sessions Judge-IV, Supaul (hereinafter called the 'learned Trial Court') in S.T. No. 278 of 2012/T.R. No. 55 of 2012 arising out of Pipra P.S. Case No. 163 of 2012, G.R. No. 1714 of 2012 whereby and whereunder the learned Trial Court has been pleased to find the appellant guilty of the offence under Section 376 of the Indian Penal Code (in short



‘I.P.C.’) and directed the appellant to undergo a sentence of imprisonment for life and to pay a fine of Rs. 10,000/- for the offence punishable under Section 376 I.P.C. In the event of default in payment of fine, the accused-convict would further undergo rigorous imprisonment for three months.

Prosecution Case

3. The prosecution story is based on the *fardbeyan* of the victim aged about nine years recorded by S.I. Subhash Ram on 02.10.2012 at 11:30 hours in Primary Health Centre, Pipra. In her *fardbeyan*, the victim alleged that on the said date (02.10.2012) in the morning at 8 O' Clock she had gone to play in the courtyard of Hare Ram Mandal (the appellant) where the daughter of Hare Ram Mandal was there. She alleged that Hare Ram Mandal sent his daughter outside for some work, his wife was cleaning rice on the hand pump in the courtyard. She has further alleged that at the same time, Hare Ram Mandal caught hold of her hand and before the victim could have understood anything, he put one of his hands on to her mouth and made her to lie flat on the verandah whereafter he opened her undergarment and committed wrong act with her. The victim alleged that when she got pain and shouted then he left her and fled away. After wearing back her undergarment, she came back to her maternal grandmother, her



frock and undergarment were having blood marks. She disclosed the entire occurrence to her maternal grandmother and her mother thereafter her maternal grandmother told it to the neighbours and brought the victim to Pipra hospital for treatment. The *fardbeyan* of the victim has been witnessed by her maternal grandmother, (P.W.-2). On the basis of the said *fardbeyan*, formal First Information Report (Exhibit '5') has been registered on 02.10.2012 at 12:15 P.M.

4. After investigation of the case, the police submitted a charge-sheet against the appellant for the offences under Section 376 I.P.C. Cognizance was taken by the learned Chief Judicial Magistrate, Supaul on 17.11.2012 and the case was committed to the Court of Sessions on 04.12.2012. The charges were read over to the appellant which he denied and claimed to be tried.

5. To substantiate the charge, prosecution has examined as many as thirteen witnesses and adduced several documentary evidences which have been marked exhibits. The list of witnesses and the list of exhibits are as under:-

List of Prosecution Witnesses

PW-1	Victim (X)
PW-2	Maternal Grandmother of the victim
PW-3	Mother of the victim
PW-4	Nutan Verma
PW-5	Arun Kr. Singh
PW-6	Maternal Grandfather of the victim



PW-7	Dr. Suman Kumari
PW-8	Mihir Kr. Verma
PW-9	Dinesh Choudhary
PW-10	Krishna Bahadur Choudhary
PW-11	Satyendra Kumar
PW-12	Brahamdeo Choudhary
PW- 13	Shyam Sundar Singh

List of Exhibits brought on behalf of the Prosecution

Ext-1	Injury Report of the private part of prosecutrix
Ext- 1/1 and 1/3	Radiological findings of prosecutrix by Dr. Arun Kr. Singh (P.W. 5) and Dr. Mihir Kr. Verma (P.W. 8) respectively.
Ext-1/2	Injury report given by P.W. 7 .
Ext-2	Signature of witness Dinesh Choudhary on fardbayan.
Ext-3	Production -cum-seizure list of the clothes of Prosecutrix.
Ext-3/1	Signature of PW 10 on production cum seizure list.
Ext-3/2	Signature of P.W. 11 on seizure list of clothes of accused.
Ext-3/3	Signature of P.W. 12 on seizure list of clothes of accused.
Ext-4	Fardbayan of prosecutrix.
Ext-5	Endorsement on the fardbayan as to registration of the case.
Ext-5/1	Signature of S.I. Laxmi Kant on formal F.I.R.
Ext-6	Production cum seizure list of the clothes of prosecutrix
Ext-6/1	Seizure list of clothes of accused.
Ext-7	Case diary.

6. The learned Trial Court also recorded the statement of the accused-appellant under Section 313 Cr.P.C. In his statement, the accused pleaded innocence. The defence examined three witnesses to prove the innocence of the appellant. The defence



witnesses are the father-in-law, wife and married daughter of the appellant who have deposed as D.W.-1, D.W.-2 and D.W.-3 respectively.

Findings of the Learned Trial Court

7. The learned Trial Court has held that the testimony of the victim (P.W.-1) is very inspiring and unimpeachable, therefore, it cannot be disbelieved. It has also been found that her evidence is strongly supported/corroborated by the medical evidence of P.W.-4, PW-5 and PW-7 and these evidences together established the prosecution case.

Submissions on behalf of the Appellant

8. Learned counsel for the appellant has assailed the impugned judgment on various grounds. It is submitted that there is no eye witness to the occurrence. The opinion of the Doctor (P.W.-5) as to the age of P.W.-1 being 12 years would show that the victim was at the age of onset of her menstruation and this will be the reason for finding blood in the clothes of P.W.-1.

9. Learned counsel submits that the clothes of the victim and the appellant were seized by the Investigating Officer but those were not sent for chemical examination to the Forensic Science Laboratory, therefore, there is no report corroborating that the victim was bleeding. It is his further submission that the



prosecution has not brought any documentary evidence regarding the alleged extra judicial confession made by the appellant before the villagers/relatives and therefore, that part of the evidence would not be reliable.

10. Learned counsel for the appellant submits that the defence witnesses have stated that the prosecution side was putting pressure upon the accused-appellant to sell a homestead piece of land. The defence witnesses are consistent that because of this land dispute, the appellant has been falsely implicated in this case.

Submissions of the State

11. On the other hand, learned Additional Public Prosecutor for the State has opposed the appeal. It is submitted that on perusal of the judgment of the learned Trial Court, it would appear that the Trial Court had meticulously examined all the evidences available on the record. The victim is a minor girl who has withstood her cross examination and the defence has failed to create any dent in the credibility of this witness.

12. It is submitted that the offence was reported to police within three hours of the occurrence, as the victim was taken to the Primary Health Centre, Pipra for treatment and in course of her treatment, her *fardbeyan* was recorded police.



13. It is submitted that Dr. Suman Kumari (P.W.-7) who was posted as a Medical Officer at Pipra Primary Health Centre on 02.10.2012 had examined the victim (P.W.-1) and found several injuries on her body including bleeding from her vagina due to musocal tear. The Doctor has also found tear of vaginal membrane due to physical contact. The report of Doctor (P.W.-7) has been marked as Exhibit '1/2'. The evidence of Dr. Mihir Kumar Verma (P.W.-8) and that of Dr. Arun Kumar Singh (P.W.-5) who are the Doctors of Sadar Hospital, Supaul would also support the prosecution case.

14. It is submitted that in this case, the I.O. has not been examined but that will not cause any prejudice to the defence inasmuch as in this case, the place of occurrence has not been questioned by the defence and the immediate circumstances which were available after the commission of the act have been duly proved by the prosecution witnesses.

Consideration

15. We have heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also perused the trial court records.

16. In this case, the victim is the informant of the crime. She is a minor girl aged about 12 years as per the medical



evidence. She has been examined as P.W.-1. In her examination-in-chief, she has reiterated her case on the line of her *fardbeyan*. The examination-in-chief is consistent and from the pattern of cross-examination, it would appear that the defence has not questioned her as to her presence in the courtyard of the appellant on the given date and time of occurrence. In Paragraph '6' of her deposition, while answering the questions put to her in cross-examination, this witness has stated firmly that she was in the courtyard of the appellant for about half an hour. The victim has deposed firmly and without any deviation from her earlier statement made before the police. The defence suggested the victim (P.W.-1) that there was some quarrel between the appellant and the maternal grandmother of the victim and the people who reached at the place of occurrence said that Hare Ram was mad and for this reason, he had committed the act. The cross-examination of the defence nowhere questions the occurrence which had taken place in the house of the appellant. The defence suggested that Hare Ram (the appellant) had committed the act because he is mad and he had done so in the condition of his madness. These suggestions were immediately rejected by way of denial in the cross-examination of P.W.-1.



17. The evidence of the maternal grandmother of the victim who has been examined as P.W.-2 would show that she has deposed on the immediate circumstance which she came to know from the victim on reaching her house after she was subjected to rape. P.W.-2 brought victim to Pipra. Dinesh Chaudhary (P.W.-9) and Krishna Bahadur Chaudhary (P.W.-10) had also accompanied the victim (P.W.-2) to the police station. She has deposed on the date of occurrence that the victim was treated in Supaul hospital. She identified her thumb impression on the *fardbeyan*. She has also stated that police had seized the clothes of the victim and the clothes of the victim are still with the police.

18. This Court finds that on record, the seizure list of the clothes of the victim is lying. The seizure list has been marked Ext.-‘6’. P.W.-9 and P.W.-10 are the seizure list witnesses and the seizure list would show that the police had seized the frock and undergarment of the victim on which blood mark was present. The police had also seized a cloth of the appellant and the seizure list (Ext- ‘6/1’) has been prepared by S.I. Suhas Ram. It is, therefore, evident that the clothes of the victim and the accused both were seized by the police and the seizure list have been duly proved by P.W.-9 and P.W.-10. P.W.-10 has stated to the extent that the frock was of parrot colour and the pant on which blood mark was present were seized by the police.



19. This Court has also noticed that Satendra Kumar (P.W.-11) and Brahamdeo Chaudhary (P.W.-12) are the two witnesses of the seizure of the cloth of the appellant.

20. The injuries of the victim have been proved by the Doctor of Pipra, Primary Health Centre as well as the Doctors of the Sadar Hospital, Supaul. Dr. Suman Kumari (P.W.-7) is the first Doctor who had treated the victim in the Primary Health Centre at Pipra on 02.10.2012 at 01:15 P.M. She has found the following injuries:-

- “(i) Abrasion of Chest $\frac{1}{2}$ ” x $\frac{1}{2}$ ”
- (ii) Abrasion of Hip
- (iii) Bleeding per vagina due to musocal tear
- (iv) Tear at vaginal membrane due to physical contact.”

This witness was suggested that her report is an ante-dated report which she denied and she had proved the injury report as Ext.- ‘1/2’.

21. Dr. Mihir Kumar Verma (P.W.-8) is another Doctor who has treated the victim (P.W.-1) in Sadar hospital, Supaul. He had examined the blood of the victim and found that it was of Group – A+. Her injury report has been marked Ext.-1/3.

22. The victim was also examined by the Doctor Arun Kumar Singh (P.W.-5) in Sadar hospital, Supaul. he has conducted the radiological examination on the victim and on the basis of the radiological findings the age of the victim was found between 10-12



years. His injury report has been marked as Ext.-1/1. These Doctors have been examined and cross-examined. It is evident from the opinion of the Doctor particularly the first Doctor Suman Kumari (P.W.-7) that the victim (P.W.-1) had injuries on her private parts. She had suffered tear of vaginal membrane due to physical contact. The evidence of the Doctor (P.W.-7) clearly corroborates the prosecution version as disclosed by the victim (P.W.-1).

23. This Court finds that the mother of the victim has also been examined as (P.W.-3) and she has supported the prosecution case. She had closely seen the victim and had found that the victim was bleeding from her private part as she has been subjected to wrong act.

24. On perusal of the entire evidence on the record, this Court finds that the learned trial court has duly considered the entire prosecution evidence available on the record. So far as the evidence of the defence witnesses are concerned, they have deposed that the accused-appellant has been falsely implicated on account of land dispute. The statement of the defence witnesses are not consistent with the case of the defence as set up during the cross-examination of the prosecution witnesses. The evidence of the defence witnesses are not inspiring confidence.

25. In the opinion of this Court, the victim (P.W.-1) of this case is a sterling witness. In the case of **Rai Sandeep Alias Deepu**



Versus State (NCT of Delhi) reported in **(2012) 8 SCC 21**, the Hon'ble Supreme Court has considered as to who may be put in the category of “sterling witness”. Paragraph ‘22’ of the judgment in the case of **Rai Sandeep Alias Deepu** (supra) is being reproduced hereunder for a ready reference:-

“22 In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have correlation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any



corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

26. In our considered opinion, the quality of the evidence of the victim (P.W.-1) would show that she has duly understood all the questions and her competence to depose was never doubted by the prosecution. She has withstood the cross-examination as well. The corroborative evidence is in form of the injury report of P.W.-5.

27. We find no error in the impugned judgment and order.

28. In result, this appeal is dismissed.

29. Let trial court records together with the judgment be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Neha/-

AFR/NAFR	
CAV DATE	
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