

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.297 of 2014

Arising Out of PS. Case No.-39 Year-2012 Thana- PARSABAZAR District- Patna

Atendra Thakur, S/o- Munna Thakur, R/o village- Suitha, P.S.- Parsa Bazar,
District – Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Saroj Kumar Choudhary, Amicus Curiae
For the State	:	Mr. Syed Ashfaque Ahmad, APP
For the Informant	:	None.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT

Date : 03-02-2026

The present criminal appeal has been preferred by the appellant, Atendra Kumar, against the judgment of conviction dated 16.04.2014 and the order of sentence dated 23.04.2014 passed by the Court of Ad hoc Additional District & Sessions Judge-I, Patna, in Sessions Trial No. 638/2012 arising out of Parsa Bazar P.S. Case No. 39 of 2012, G.R. No. 1708 of 2012, whereby and whereunder the appellant has been convicted for the offence under Section 376 read with Section 511 of the Indian Penal Code (in short, 'IPC'), and he has been sentenced to undergo rigorous imprisonment for five years with a fine of Rs. 10,000/- (Rupees Ten Thousand), and in default of payment of fine, he has further been directed to undergo simple



imprisonment for one year.

Prosecution story :-

2. The prosecution story, in brief, is as under :-

The informant, who is the victim herself (hereinafter referred to as 'victim'), alleged that on 14.04.2012 at about 04:10 P.M., she went to the coaching centre run by one Gunjan Master, situated at village- Palanga Bagicha. After attending the coaching, she was returning alone to her home, when she saw the appellant coming from behind on a bicycle. Thereafter, when she reached near a ridge leading to her village, she left the road and chose a shortcut way to reach the village. After that the appellant started following her after leaving his bicycle in a field. The victim further alleged that when the appellant started following her, she, on account of being alone, started running, but the appellant chased and caught hold of her, closed her mouth by placing his hand, and pushed her to the ground of a wheat field with an intention to rape her. The victim further alleged that during the course of committing the occurrence, the appellant fell upon her body and tried to open her pant, but when she cried, some people started arriving at that place. Thereafter, the appellant tried to flee, but he was caught hold by those persons. The appellant was assaulted by the gathered



people, and thereafter, the police were informed through mobile communication. After that the Station House Officer (SHO) and other police officials arrived there. As per the victim, she recorded her fardbeyan at 06:45 P.M. before the Assistant Sub-Inspector (ASI), namely Din Bandhu Ram, of Parsa Bazar Police Station. On that basis, the formal FIR was registered bearing Parsa Bazar P.S. Case No. 39 of 2012 for the offence under Section 376 read with Section 511 of IPC, that set the criminal law in motion.

2.1. Here, it is relevant to mention that at the time of recording the fardbeyan, the victim's maternal grandparents, who were examined as PW-2 and PW-3, and one Santosh Kumar (PW-1), were also present, who made their signatures upon the fardbeyan.

3. After completion of the investigation, the police charge-sheeted the appellant for the same offence under which the FIR had been registered, and thereafter, the concerned Magistrate took cognizance of the said offence and committed the case of the appellant to the Court of Sessions for trial vide order dated 06.06.2012.

4. The appellant stood charged for the offence under Section 376 read with Section 511 of IPC, that was read over



and explained to him, to which he denied and claimed to be tried for the charged offence.

5. During the trial, the prosecution examined altogether six witnesses, who are as under :-

PW-1	Santosh Kumar	An independent person
PW-2	Chhatthu Singh	Maternal grandfather of the victim
PW-3	Shakuntala Devi	Maternal grandmother of the victim
PW-4	Rajnish Kumar	Maternal uncle of the victim
PW-5	XXXX	Victim
PW-6	Din Bandhu Ram	Investigating Officer

6. In documentary evidence, the prosecution proved and exhibited the following documents, which are as under :-

Ext-1	The signature of Chhatthu Singh (PW-2) on the informant's fardbeyan
Ext-1/1	The signature of Shakuntala Devi (PW-3) on the informant's fardbeyan
Ext-1/2	The signature of the informant on the fardbeyan

7. After completion of the prosecution evidence, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure (in short, 'Cr.P.C.'), giving him an opportunity to explain all the material circumstances appearing against him from the prosecution evidence, which were denied by him. While recording the statement, the appellant claimed himself to be innocent; however, he did not take any specific defence in his statement.

8. The appellant did not give any defence evidence, either in oral or documentary form.



9. While convicting the appellant, the learned trial court mainly placed reliance upon the victim's own evidence. Though the evidence of the victim's maternal grandparents (PW-2 and PW-3) was deemed to be hearsay with regard to the commission of the occurrence, the learned trial court took their evidence as supportive of some material facts of the prosecution story, such as the date and time of occurrence, the place of occurrence, and the factum of the appellant's apprehending on the spot by the villagers. As far as the non-recovery of the material objects, such as the appellant's bicycle and the victim's study materials, which are said to have been left by the accused and the victim at the spot during the course of the occurrence, is concerned, the learned trial court did not take it as fatal to the prosecution case, as the same was considered to be a fault of the investigating officer during the investigation, for which the prosecution should not be made to suffer.

10. Mr. Saroj Kumar Choudhary, learned amicus curiae and Mr. Syed Ashfaq Ahmad, learned Additional Public Prosecutor for the State, are present and they are heard.

Submissions by learned *amicus curiae* :-

11. Learned *amicus curiae* has submitted that the investigation made by the investigating officer to investigate the



truthfulness of the occurrence, remained faulty as firstly, the investigating officer did not make an attempt to verify the victim's coaching center and in this regard, no independent person was examined, the fellow students of the same coaching center or the location of the coaching center and even the concerned person who was running the said coaching center, was not investigated and examined. It came in the evidence of the victim that the victim used to go to coaching center alone from her village without any companion student, which ordinarily does not happen in the rural areas. Before the trial court, the victim deposed that the appellant did not come to the house of her maternal grandparents as he was not paid for his professional service (barber work) by her maternal relatives whenever the service of the appellant was sought, which shows that there was no good relation between the appellant and the family of the victim's maternal grandparents and the same is relevant to the appellant's defence taken by him before the trial court. On the fardbeyan, neither the victim's signature nor the signatures of other witnesses, who accompanied the victim to the police station when the victim's fardbeyan was recorded, have the details of the date when they made their signatures. Learned amicus curiae has further submitted that as per the



prosecution story narrated by the victim herself, upon hearing her cry, some nearby people working in nearby fields rushed to the spot and caught hold of the appellant on the spot and those people were the independent persons and also reliable persons to support the allegations of the victim but none of them was examined by the investigating officer, so, the case of the prosecution completely depends upon the evidence of the relative witnesses of the victim, who accepted in their testimony that they did not see the commission of the alleged occurrence. The investigating officer (PW-6) deposed before the trial court that he did not find the appellant's bicycle and the victim's books, pen, etc., (study materials) at the alleged spot of crime while as per the case of prosecution, the appellant left his bicycle in a field before rushing towards the victim and at the time of alleged occurrence, the victim was returning from her coaching center after attending class but no finding of any study material at the place of occurrence by the investigating officer goes against the said story of the prosecution. It has been further submitted that the victim (PW-5) and her relatives (PW-2 & PW-3) deposed before the trial court that the appellant did not have good character and used to enter into the houses of any person with bad intention and on several occasions, he was



caught hold by the villagers and punished in panchayat meetings but in this regard, there is no evidence except the testimony of the victim and her close relatives and further, the investigating officer deposed that in the police station there was no any complaint or case against the appellant prior to the registration of the FIR of the present matter, which goes against the prosecution's claim as to the appellant having no good character during the relevant period of occurrence.

Submissions by learned APP :-

12. On the other hand, learned APP appearing for the State has argued that at the time of commission of the attempt to rape, the victim was admittedly alone and in this regard, the FIR itself is evident. The date and time of occurrence and the place of occurrence as disclosed by the victim gets corroboration from other prosecution witnesses, particularly, from the evidence of PW-2, PW-3, PW-4 and investigating officer (PW-6), and to the said extent, the evidence of these witnesses appear to be highly corroborative to the prosecution story. As far as the boundaries of the alleged place of occurrence are concerned, the investigating officer deposed before the trial court that during the course of investigation the victim's maternal grandfather (PW-2) supported the description of the boundaries as given by



the victim herself. As the victim did not sustain any bodily injury, therefore, there was no need to place her for medical examination by the investigating officer and in this regard, the evidence of the investigating officer is important and the victim herself accepted before the trial court that she did not sustain any injury when the appellant tried to rape her. As far as the case of the attempt to rape is concerned, it is submitted by learned APP that the appellant firstly pushed the victim on the wheat field and thereafter tried to open the victim's pant, which clearly shows the appellant's intention to commit rape with the victim and he was about to commit rape with the victim but upon hearing her cry, the nearby people rushed and caught hold of the appellant when he was trying to flee away. Therefore, the appellant has been rightly convicted for the attempt to rape under section 376 read with section 511 of IPC.

13. Learned APP further submitted that the appellant's main defence as to the reason of false implication of him by the victim, as revealed by the appellant while cross-examining the prosecution witnesses, was not supported by any of the prosecution witnesses when they were cross-examined. On this aspect, all the prosecution witnesses, particularly, the victim herself, her maternal grandparents and her maternal uncle did



not say anything about the said bad relation between the appellant and their family on account of alleged non-payment of the service charge whenever the professional service had been rendered by the appellant in the family of the victim's maternal grandparents.

14. It has been lastly submitted by learned APP that the *fardbeyan* of the victim was recorded immediately at the spot by the police official ASI (I.O/PW-6) and the same gets support from his evidence and other material witnesses of the prosecution and the FIR was registered within three hours of the commission of the alleged occurrence, which shows reliability and naturality of the FIR and further, the appellant did not succeed to show any cogent reason on the part of the victim or her maternal relatives to fabricate a false case involving the modesty of a 11 year old minor girl.

Consideration and Analysis :-

15. I have heard both the sides, perused the judgment impugned and the evidences available on the record of the trial court and also the statement of the appellant. At first, I come to the reliability of the FIR. As per the prosecution story, the alleged occurrence of the attempt to rape upon the victim took place in the evening at 6:00 P.M., on 14.04.2012, in a wheat



field when the victim was returning to her home from a coaching centre. The victim's fardbeyan was recorded at 6:45 P.M. on that very day at the spot by the Assistant Sub-Inspector Din Bandhu Ram (PW-6), and that was supported by the PW-6 in his evidence. The formal FIR was registered at 9:00 P.M. on that very day, so, there was only three hours gap between the commission of the alleged occurrence and the institution of the formal FIR and during the course of that three hours, as per the case of the prosecution, the appellant was caught hold by the villagers when he was trying to escape and thereafter, the police was informed and he was handed over to the police and these events as well as the distance of the police station from the place of occurrence, are sufficient to justify the delay of 3 hours in the registration of the formal FIR and further, the fardbeyan was recorded by the victim immediately at the alleged place of occurrence. Accordingly, the FIR based on the fardbeyan of the victim appears to be natural and reliable without any afterthought. As per the case of the prosecution, the victim was alone when the appellant tried to commit rape upon her, so, in such a situation, the victim appears to be the sole eyewitness of the commission of the occurrence, so, the case of the prosecution entirely depends on her evidence. Hence, at first, I



would like to discuss the evidence of the victim, who was examined as PW-5. Before going to the evidence of the victim, I would like to point out the material facts appearing from the prosecution story narrated by the victim in her fardbeyan. First, the place of occurrence which is said to be a wheat field situated nearby the village road, the second is the time of occurrence which is said to be at 6:00 P.M., the third is the date of occurrence which is said to be 14.04.2012 and the fourth material fact is that at the time of occurrence the victim was returning from a coaching centre after taking tuition and the appellant was coming on his bicycle and the fifth and last material fact is that the appellant was caught hold by the villagers, who were working in nearby fields and rushed to the place of occurrence upon hearing the cry of the victim, and after catching hold of the appellant the police was informed and he was handed over to the police. The first five facts are the most important part of the evidence of the victim. The victim deposed in her examination-in-chief that the incident took place on 14.04.2012 in the evening at about 6:00 P.M. At that time, she was returning on her foot after taking tuition from one, namely Gunjan Master, and when she saw the appellant coming on his bicycle, she left the village road after crossing the *ridge* and



opted for a shortcut way to reach her maternal grandparents' house but the appellant started following her after leaving his bicycle in a field and ran after her upon finding her alone and thereafter, he caught hold of her and pushed her down to the wheat field and climbed upon her body, pressed her mouth and tried to open her pant but anyhow she (the victim) managed to remove the appellant's hand from her mouth and started crying, upon which nearby people began running towards the appellant and victim. Thereafter, the appellant started fleeing but he was caught hold by the gathered people near the place of occurrence in the same field. The victim further deposed in her examination-in-chief that upon seeing her condition, the gathered people started assaulting the appellant however, in the meantime the police arrived and interrogated her and also recorded her statement. Thereafter, she and the appellant along with her maternal relatives and one person belonging to her village, were taken to the police station by the police in a jeep where her *beyan* (statement) was again recorded.

16. While recording the statements in the examination-in-chief, the victim identified the appellant, who was present in the court room at that time. The victim also identified her signature upon her *fardbeyan* on seeing it and



stated that before signing upon the fardbeyan, she had read the same. The victim's signature was marked as 'Ext-1/2'. On all these relevant and important facts of the prosecution story, the victim was cross-examined at length by the defence. She deposed in her cross-examination that she knew the appellant for a long time on account of his profession. She further stated that when the appellant was following her, she was alone and she recorded her statement at the police station and thereafter, she returned back. She next stated that her medical examination was not done by the police. She deposed in her cross-examination that the police did not seize anything from the place of occurrence. Regarding the main part of the occurrence pertaining to the attempt to rape, upon being cross-examined, she stated in the paragraph No. 9 that the appellant tried to open her pant but he did not succeed to commit anything wrong with her and during course of that occurrence, she did not sustain any scratch or injury.

17. All the facts as stated above by the victim in her cross-examination are completely supportive to the prosecution story narrated by the victim in her *fardbeyan*, which was a natural statement of the victim. Though the police did not seize any material object, such as, the appellant's bicycle and the



victim's study materials like her books, coaching bag, etc., however, in this regard, the evidence of the investigating officer seems to be some explanatory. The investigating officer, examined as PW-6, deposed in his cross-examination that he reached at the place of occurrence in the night at about 8 P.M. As per the case of the prosecution, upon hearing the cry of the victim, several nearby people rushed to the spot and gathered there, so, in such a situation, in the presence of several persons on an open field in the night, the appellant's bicycle and the victim's study materials could have been found only if a serious search attempt was made by the investigating officer but the investigating officer's evidence shows that no such attempt was made by him and in this regard, he remained some careless but merely by this fact, the credibility of the prosecution story cannot be disbelieved in entirety. As far as the above mentioned five material facts are concerned, which mainly relate to the time, date and place of occurrence, the factum of appellant's apprehending by the gathered people, the information given to the police by the gathered people and thereafter, the arrival of the police and recording the *fardbeyan* of the victim at the spot and handing over the appellant to the police by the said people, the evidence of PW-2, PW-3 and PW-4, is important and



relevant. All these witnesses fully supported the above facts and deposed before the trial court that when they reached at the place of occurrence, they found the appellant in captivity of the villagers and thereafter the police arrived and recorded the statement of the victim and others, and the appellant who had been caught hold by the villagers, was handed over to the police. All these facts and circumstances are important as the same, according to the prosecution; happened just after the commission of the alleged occurrence of the attempt to rape and in this regard, the evidence of these witnesses is fully supportive and corroborative to the victim's story narrated by her in the *fardbeyan*.

18. As far as the main defence taken by the appellant before the trial court is concerned, there is nothing to support the same. The appellant mainly took the defence that there was no good relation between him and the victim's maternal family as he was not paid for the service which had been rendered by him to the victim's maternal relatives, owing to which a false story was fabricated by the maternal relatives of the victim with the help of a minor girl (victim). I do not find force in the said defence as all the material witnesses whose evidence was important to the said defence, among them, PW-2, PW-3 and



PW-4, including the victim (PW-5), denied the suggestion pertaining to said defence when the same was put to them by the defence during the course of cross-examination and they deposed that it was wrong to say that on account of bad relation running between the appellant and the victim's maternal family members due to non-payment of service rendered by the appellant to them, a false case was fabricated. Furthermore, the appellant's said defence does not appear to be believable and the same cannot be a reason for persuading the old grandparents of the victim to fabricate a false case involving the modesty of their minor granddaughter, merely on account of a dispute of non-payment of the professional service (*barbering*) rendered by the appellant. Here, it is relevant to mention that the investigating officer deposed that the appellant had no good character as during the investigation the villagers revealed that the appellant used to misbehave with women, for which panchayat meetings had also been conveyed, in which the *panches* had punished the appellant. Though the investigating officer did not examine the *panch* or a person who participated in the said panchayat meetings, however, the prosecution witnesses (PW-2, PW-3 & PW-4), although they are the relatives of the victim, supported the said alleged conduct of the



appellant and the same goes in favour of the prosecution to some extent.

19. Now, I am to examine the applicability of the offence punishable under section 376 read with section 511 of the IPC in the present matter. As per the story narrated by the victim in her *fardbeyan*, the accused firstly followed her and thereafter ran behind her in a field and pushed her to the ground and climbed onto her body and started opening her pant but during that course when the victim cried, the appellant tried to escape upon seeing the people who ran to the place of occurrence after hearing the cry of the victim. The victim deposed almost similar story before the trial court in her examination-in-chief and remained firm to her stand in the cross-examination also. By these acts of the appellant as alleged by the victim, it can be deemed that he had crossed the stage of preparation and entered into the stage of attempting to commit the offence of rape. As the appellant's acts clearly demonstrate the execution of his *mens rea* to rape the victim and his preparation had come to an end on that very moment when he pushed the victim to the ground on a wheat field and climbed onto her body and tried to open her pant. Though he could not succeed in committing sexual penetration, however, the



appellant was about to commit rape upon the victim but could not succeed on account of raising an alarm by the victim and owing to the arrival of nearby people. As such, this Court finds the trial court's approach in framing the charge under section 376 read with section 511 of the IPC against the appellant and convicting him for the same, to be correct. Accordingly, this Court finds no illegality in the impugned judgment of conviction and order of sentence and there is no merit in this appeal, so, it stands dismissed.

20. The appellant is on bail, so, his bail bonds are cancelled and he is directed to surrender before the trial court within fifteen days from the date of receipt of this Judgment's copy by the trial court and serve the remaining part of the sentence awarded upon him by the trial court. If the appellant does not surrender within the fixed period then the learned trial court shall take all necessary legal steps to get him in custody and put him in jail so that he can serve the remaining part of his sentence.

21. Let the judgment's copy along with the trial court's record be sent immediately to the trial court for needful compliance.

22. Mr. Saroj Kumar Choudhary, learned *Amicus*



Curiae shall be entitled to remuneration, as per notification dated 18.05.2017 issued by the State Government, to be paid by the Patna High Court Legal Services Committee for assisting this Court as *Amicus Curiae*.

(Shailendra Singh, J)

annu/-

AFR/NAFR	AFR
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